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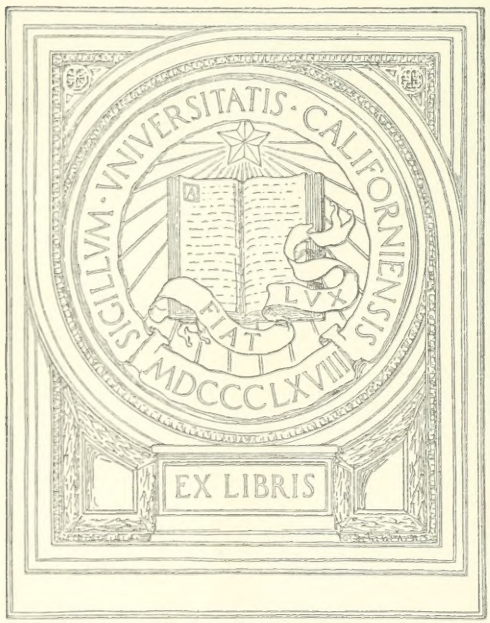

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Rochester, N.Y. Ordinances, etc

MUNICIPAL CODE

OF THE

CITY OF ROCHESTER

VOLUME ONE

CONTAINING ALL THE CHARTER LAW, TOGETHER WITH THE SPECIAL AND GENERAL ACTS OF THE LEGISLATURE AFFECTING ROCHESTER, IN FORCE UP TO JAN. 1, 1904

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1904

ENTERED ACCORDING TO ACT OF CONGRESS IN THE YEAR NINETEEN HUNDRED AND FOUR

BY EDWARD R. FOREMAN

IN THE OFFICE OF THE LIBRARIAN OF CONGRESS AT WASHINGTON

Press of John C. Moore Corporation
Rochester, N. Y.

INTRODUCTION

The citizens of Rochester are entitled to a concise presentation of all the laws and ordinances directly governing their municipality. The maxim is established that "those who are required to obey the laws should have the opportunity of knowing what they are." With two co-existing charters, numerous special and general laws, and twelve different publications of ordinances and regulations, the local laws of Rochester are in a chaotic condition. No previous attempt has been made to reduce these scattered provisions to a code. Separate publication has given rise to general confusion until it has become very difficult for any citizen to inform himself as to the laws actually in force. The codification of all laws directly affecting Rochester is, to apply an expression of Judge Story's, "practicable and expedient."

A brief discussion of the laws and ordinances now in force will help to make clear the necessity of a Municipal Code.

The City of Rochester is governed directly by two classes of laws, viz.: FIRST, Laws Passed by the Legislature, in the form of (A) Charters, (B) Special, or (C) General Acts: SECOND, Local Ordinances or Regulations, passed under authority of existing acts.

FIRST: Laws Passed by the Legislature

(A) CHARTERS White Charter

The Constitution of the State of New York has divided the cities into three classes according to population. New York and Buffalo are the only cities of the first class: Rochester, Syracuse, Albany and Troy are the only cities of the second class; all other cities are of the third class. The above named cities of the second class are governed by a law which is commonly known as "The White Charter," so-

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called from Senator Horace White, of Syracuse, who introduced the bill. This act, entitled "*An act for the government of cities of the second class*" was passed in 1898 (L. 1898, Ch. 182) and became effective Jan. 1st, 1900. Since the White Charter went into effect there has been more or less confusion in the public mind as to just what laws were left in force. Many supposed the new charter repealed all existing laws and was the only statute to be consulted. Such, however, was not the case. While the White Charter, by a general clause, repealed all inconsistent statutes, it did not repeal specifically *any laws* affecting cities of the second class. On the contrary said charter declared as follows, (White Charter, § 483): "Nothing contained in this act shall be construed to repeal any statute of the state or ordinance of the city or rule or regulation of the board of health not inconsistent with the provisions of this act and the same shall remain in full force and effect when not inconsistent with the provisions of this act to be construed and operated in harmony with the provisions of this act."

The result of this clause was to leave in effect many local laws and charter provisions in each of the cities of the second class. The White Charter, then, is only *one part* of our local law.

OLD CHARTER

Rochester was incorporated as a city in 1834 (L. 1834, Ch. 199). The original charter was variously amended up to 1880 when the legislature passed the last consolidation act entitled, "An act to further amend chapter one hundred and forty-three of the laws of eighteen hundred and sixty-one, entitled 'An act to amend and consolidate the several acts in relation to the charter of the city of Rochester' and to consolidate therewith the several acts in relation to the charter of said city." (L. 1880, Ch. 14).

Since 1880 the original city charter has been amended frequently, usually with reference to the said consolidation act. This charter,

commonly referred to as the "Old Charter," is all in existence except such portions as are inconsistent with the White Charter. Rochester, therefore, has two co-existing charters to be read together, the White Charter controlling.

(B) SPECIAL LAWS

The legislature has passed many special laws affecting Rochester which are independent of its charter law. For example, our parks, east and west side sewer systems, police and fire department pension funds, the protection of the potable water supply, the collection of back taxes and other important matters are regulated by special laws not a part of the charter.

(C) GENERAL LAWS

In adition to the charter law and the various special acts, Rochester is directly affected by many general laws such as The General Municipal Law, The General City Law, The Labor Law, The Public Health Law, The Civil Service Law, The Public Officers Law, The Election Law, etc.

SECOND: Local Ordinances and Regulations

By the terms of the White Charter (§ 12) the legislative power of the City of Rochester is vested in the common council giving it authority "to enact ordinances not inconsistent with the laws of the state for the government of the city and the management of its business, for the preservation of good order, peace and health, for the safety and welfare of its inhabitants, and the protection and security of their property." However, under existing laws, the power to pass ordinances and make regulations within the City of Rochester resides in various other bodies, viz., the Board of Park Commissioners, (L. 1888, Ch. 193, §§ 19, 24, 30 and 31); the Commissioners of Mount Hope Cemetery, (L. 1880, Ch. 14, § 74; as amended L. 1892, Ch. 190); the Commissioner of Public Safety as to Health, (White Charter, § 231); the Commissioner of Public

Safety as to the Police Department, (White Charter, § 176); the Commissioner of Public Safety as to the Fire Department (White Charter, § 201); the Commissioner of Public Works as to the Water Works System, (White Charter, § 110); the Examining Board of Plumbers, (General City Law); the Board of Education of the City of Rochester, (L. 1880, Ch. 14; as amended L. 1898, Ch. 660); the Civil Service Commissioners, (Civil Service Law).

Acting under the authority of the laws above noted, various regulations and ordinances have been adopted and published. When this volume goes to press, there are in existence the following separate publications of ordinances and rules: The Penal and General Ordinances of the Common Council, the Ordinances of the Park Commissioners, of the Health Board, of the Board of Education, of the Examining Board of Plumbers, of the Mount Hope Cemetery Commissioners, the Rules of the Commissioner of Public Works as to the Water Works, of the Commissioner of Public Safety as to the Police Department, of the Commissioner of Public Safety as to the Fire Department, the Rules of the Common Council and the Civil Service Rules.

From the above statement it is evident that a Municipal Code for the City of Rochester would be divided naturally into two parts, viz.: FIRST, LAWS PASSED BY THE LEGISLATURE; SECOND, ALL LOCAL ORDINANCES.

It has been deemed wise to publish these two parts in separate volumes.

The present "Volume One" presents the FIRST PART, viz.: ALL OF THE CHARTER LAW, TOGETHER WITH THE SPECIAL AND GENERAL ACTS OF THE LEGISLATURE AFFECTING ROCHESTER, IN FORCE UP TO JAN. 1ST, 1904.

"Volume Two" should contain a codification of ALL LOCAL ORDINANCES, RULES AND REGULATIONS.

It is hoped sincerely that this work may prove of public service.

Rochester, N. Y., February 18th, 1904 EDWARD R. FOREMAN

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Note.—The above analysis of charter law of the City of Los Angeles is not a part of the charter as enacted by the legislature. It follows the original article numbers of the White Charter and is inserted for convenience. It will be observed that Articles XI–XIII, inclusive, are missing from the White Charter as enacted.

MUNICIPAL CODE

OF THE

CITY OF ROCHESTER

CHARTER LAW

MEMORANDUM ON THE WHITE CHARTER

In regard to the White Charter the Court of Appeals has said that "the idea upon which the act seems to be based emanated from the Constitutional Convention of 1894" (Pryor vs. City of Rochester, 166 N. Y. at page 551). The constitution adopted that year classified the cities of the state (State Constitution, Art. XII, § 2). In May, 1895, the legislature passed an act authorizing the governor to appoint a commission to prepare and report a law for the government of cities of the second class (L. 1895, Ch. 548), as follows:

"Section 1. Within five days after the passage of this act the governor shall appoint five persons, one each from the cities of Albany, Rochester, Syracuse and Troy, and one from the state at large, as commissioners to prepare and submit on or before the first day of February, eighteen hundred and ninety-six, such proposed general city laws relating to the property, affairs or government of the cities of the second class and the several departments thereof, and such proposed amendments to existing laws relating to or governing either or all of the cities above named and such additional general city laws, as, in the opinion of such commissioners, are proper and necessary for the government of cities of the second class, as contemplated by article twelve of the revised constitution.

§ 2. The members of such commission shall receive their necessary expenses and disbursements incurred in the performance of the duties herein imposed when the same are properly audited by the comptroller of the state, and the same, when so audited, shall be paid on warrant of the comptroller out of any moneys in the treasury not otherwise appropriated."

Acting under the authority of this act Governor Levi P. Morton appointed the following commissioners: James G. Cutler, to represent the city of Rochester; Alden Chester, Albany; Michael E. Driscoll, Syracuse; David M. Greene, Troy; and ex-Chief Judge of the Court of Appeals, Robert Earl, Herkimer, as commissioner-at-large and chairman. Mr. Chester being elected justice of the supreme court before the work of the commission was finished, Arthur L. Andrews, Albany, was appointed in his place.

The commission held public hearings in each of the four cities affected, and reported to the legislature on February 4, 1896. (Senate Documents, 1896, Vol. V, No. 24).

With the report was submitted a proposed act embodying their ideas. The report was unanimous except that Mr. Commissioner Earl filed a minority report dissenting on the plan for the proposed organization of the police department. Two years later the legislature passed the present "Act for the government of cities of the second class" (L. 1898, Ch. 182), which was based on the charter proposed by the commission and took its name from Senator Horace White of Syracuse, who introduced the bill.

NOTE AS TO INCONSISTENCIES

PORTIONS OF THE OLD CHARTER AND THE SPECIAL LAWS PUBLISHED IN THIS BOOK ARE INCONSISTENT WITH THE WHITE CHARTER IN VARIOUS PARTICULARS. THEY ARE ALL PUBLISHED AS THEY EXIST BECAUSE THE DETERMINATION OF INCONSISTENCIES RESTS NOT WITH AN EDITOR BUT UPON THE COURTS OR THE LEGISLATURE.

MUNICIPAL CODE OF THE CITY OF ROCHESTER

CHARTER LAW

THE "*Act for the government of cities of the second class*," (L. 1898, CH. 182, THE SO-CALLED "WHITE CHARTER") IS HERE GIVEN IN FULL AS IT EXISTS AND AT THE PROPER PLACES ARE INSERTED, IN A DIFFERENT TYPE MEASURE, THE PORTIONS OF THE "OLD CHARTER," (L. 1880, Ch. 14, AS AMENDED), WHICH STILL CONTAIN LIVE PROVISIONS.

LAWS OF 1898, CHAP. 182

The People of the State of New York represented in Senate and Assembly do enact as follows:

ARTICLE I

DEFINITION AND APPLICATION

SECTION 1. **Act applies to cities of second class**—When the word city is used in this act, it means a city of the second class, and all the provisions of this act have reference only to such cities.

§ 2. **When act applies**—Within thirty days after every state enumeration, the secretary of state shall file with the clerk of every city a certificate showing the population of such city; and if it appears therefrom that such city has since the prior state enumeration become a city of the second class, then all the provisions of this act shall apply to such city on and after the first day of January thereafter.

NOTE—§§ 3-11, inclusive, omitted in White Charter as first enacted.

White Charter

Cities classified—State Constitution, Art. XII, § 2; first class, population 250,000 or more; second class, over 50,000 and less than 250,000; third class, all less than 50,000.

City laws, how classified, passed and accepted—State Constitution, Art. XII, § 2; the General City Law, §§ 30–35; § 31 amended L. 1902, Ch. 353.

White charter discussed generally—Is to be construed as a general law. Pryor vs. City of Rochester, 166 N. Y. 548.

Old Charter

§ 1. **Corporation; name**—The inhabitants of that portion of the territory of this state, heretofore known as the city of Rochester, shall continue to be a body politic and corporate, by the name of "The City of Rochester," with the powers and privileges conferred by the statutes of this state upon corporations as well as those conferred by this, the charter of said city. (*L.* 1880, *Ch.* 14).

§ 3. **Right to sue and be sued; seal; to hold, convey and mortgage real estate**—The inhabitants of said city shall be a corporation by the name of "The City of Rochester," and may sue and be sued, complain and defend in any court, make and use a common seal and alter it at pleasure, and may receive by gift, grant, devise, bequest or purchase, and hold and convey such real and personal estate as the purposes of the corporation may require, whether such real estate be situate within or without the limits of said city; and such real estate may be incumbered by mortgage, as the common council shall direct, subject only to the approval of the mayor, according to the provisions of this charter in relation to acts of the common council of a legislative character. But no real estate shall be so received lying without the limits of the city, unless it be adjacent to the

city, except as otherwise provided. The jurisdiction of said city shall extend to and over all real estate so received, and all laws relating to the said city, and all rules, regulations and ordinances of said city shall apply to such real estate as fully as if the same were situate within the city limits. But nothing in this section shall impair or limit any powers conferred upon the executive board of the said city, or the purchase of any real estate for or in connection with the water-works of the said city. (*L.* 1880, *Ch.* 14).

§ 2. **City Boundaries**—The boundaries of said city shall be as follows: Beginning at a point in the present northerly line of said city of Rochester, which said point is in the middle of the Ridge road eight chains and seventy-five links distant easterly from the top of the east high bank of the Genesee river; thence south fifteen minutes east to the north line of Norton street; thence easterly on the said north line of Norton street to a point two hundred feet easterly from the east line of lot number forty-eight in the town of Irondequoit; thence southerly on a line parallel with the said east line of said lot number forty-eight and at a distance of two hundred feet easterly therefrom, to the south line of the highway called Waring street; thence southeasterly along the south line of said Waring street, and the said line continued to a point which would be to the intersection of the said line with the east line of the *highways known as Culver road; thence southwesterly on said line of said Culver road to a point on the east line of said Culver road two hundred and fifty-two and four-tenths feet north of where the north line of Park avenue intersects said east line of Culver road; thence southeasterly about seven hundred and fifty feet to the northwest corner of lands now owned by the Thomas

*So in session laws. Should read "highway."

Old Charter

City Boundaries—Continued

Leighton estate; thence southeasterly along the north line of said Leighton lands to a point where said last mentioned line produced would intersect the northerly line of town lot thirty-six in the town of Brighton; thence easterly along the north line of said town lot thirty-six to the northeast corner thereof; thence southwesterly along the east line of said town lot thirty-six to the Erie canal lands; thence westerly along the Erie canal lands to the east line of said Culver road; thence southwesterly along the east line of said Culver road to the north line of lot number thirty-seven in the town of Brighton; thence westerly on the north line of said lot number thirty-seven and on the north line of lots forty-five and fifty-three, in said town of Brighton, to a point in the north line of said lot fifty-three, two hundred and ninety feet easterly from the northeast corner of lot number sixty-one in said town; thence southerly on a line parallel with the east line of said lot number sixty-one to the northerly line of a road known as Elmwood avenue; thence westerly along the northerly line of said road known as Elmwood avenue about three hundred feet to the division line between said town lots fifty-three and sixty-one; thence southerly along said division line between lots fifty-three and sixty-one, and along the division line between town lots fifty-four and sixty-two of said town of Brighton, through land owned by the county of Monroe, and along the easterly line of land formerly owned by Reuben N. Booth and now owned by the state of New York, about three thousand one hundred and twenty feet, to land now or formerly owned by Hiram Smith; thence westerly along the division line between the lands owned by the said state of New York, formerly owned by said Booth, and lands of said Smith and along said line prolonged westerly, about two thousand three hundred feet to the westerly line of the highway known

City Boundaries—Continued

as South avenue; thence northerly along said westerly line of South avenue about six hundred and ninety feet to an angle in said highway; thence still northerly along said westerly line of South avenue about two thousand two hundred and ninety-five feet to the northerly line of said road known as Elmwood avenue; thence westerly along the northerly line of said road known as Elmwood avenue to a point, which said point is at the intersection of the northerly line of said Elmwood avenue with the westerly line of the lands now owned by the New York, Lake Erie and Western Railroad Company; thence southerly on the westerly line of the said lands now owned by said railroad company to a point in the center of the Westfall road, so called; thence westerly along the center of the Westfall road to a point in the center of the said Westfall road, where the said road makes an angle to the north; thence southwesterly in a straight line twenty-four hundred feet through lands now owned by or known as the Harmon farm, and the Baker farm, to a point where the east bank of the Genesee river intersects the west line of the Wolcott road, so-called; thence northeasterly along the east shore of the Genesee river about eight hundred and fifty feet to a point where the northerly line extended of a road running between lands of E. Chapin and Mathias Kondolf on the west side of said river would intersect said east bank of said river; thence westerly along said line so extended and continuing along the said line to a point where the said line intersects the easterly line of lands now owned by the Western New York and Pennsylvania Railroad Company; thence northeasterly along the east line of said lands owned by said company, to a point where the east line of said railroad would be intersected by the center line of Genesee street produced southwesterly; thence northeasterly through the center of a road,

City Boundaries—Continued

which is the continuation of Genesee street, to a point where the center line of said Genesee street intersects the present southerly line of said city, formerly the south line of the town of Gates; thence westerly along the south line of the city of Rochester, formerly the south line of the town of Gates, to a point two hundred feet westerly from the west line of Thurston avenue; thence northerly on a line parallel with the west line of said Thurston avenue and two hundred feet westerly therefrom to the northerly line of Brooks avenue; thence easterly along the northerly line of said Brooks avenue to a point in the prolongation southerly of the east line of lot number one hundred sixty-eight of the town of Gates; thence northerly along said prolongation southerly of said east line of lot number one hundred and sixty-eight to a point thirty feet southerly at right angles from the south line of lot number twenty-two of the four thousand acre tract; thence westerly parallel with the said south line of said lot number twenty-two and thirty feet southerly therefrom to the east line of the said Thurston avenue; thence northerly on the easterly line of said Thurston avenue to the north line of lot number twenty-two of the four thousand acre tract; thence easterly *in the north line of said lot number twenty-two to a point intersected by the east line of lot number one hundred sixty-eight of the twenty thousand acre tract, produced southerly, to the north line of said lot number twenty-two; thence northerly on the east line of said lot number one hundred sixty-eight produced southerly and on the east line of said lot number one hundred and sixty-eight to the northerly line of a highway known as Chili road; thence westerly along the northerly line of said Chili road to the west line of a street known as Gardiner avenue; thence northerly

*So in session laws. Should be "on".

City Boundaries—Continued

along the west line of said Gardiner avenue sixty feet; thence westerly at right angles with Gardiner avenue seventy-five feet; thence southerly parallel with said Gardiner avenue to the aforesaid northerly line of Chili road; thence westerly along the northerly line of said Chili road to the easterly line of a highway called Lincoln avenue; thence northerly along the easterly line of said Lincoln avenue to the south line of a highway called the Buffalo road; thence easterly along the southerly boundaries of the said Buffalo road to the east line of lot one hundred and sixty-eight of the town of Gates; thence northerly along the east line of lots one hundred and sixty-eight, seventy-six, seventy-five, seventy-four and seventy-three of the town of Gates, continued on the east line of lots seventy-two, seventy-one and seventy of the town of Greece, to a point twenty rods north of the center of the highway known as the Big Ridge road; thence easterly parallel with the center line of said road and twenty rods distant northerly therefrom and on said line produced easterly, to a point twelve hundred feet easterly from the east line of Lake avenue; thence northerly on a line parallel with Lake avenue ten hundred and eleven feet to a point; thence north thirty-six degrees and twenty-six minutes west, eight hundred and eighty-eight feet to a point; thence north, twelve degrees and four minutes west, to the center of a road leading to Hanford's landing; thence easterly along the center of said road leading to Hanford's landing to a point fifty feet westerly from the west high bank of the Genesee river; thence northerly parallel with the top of the west high bank of the Genesee river and fifty feet distant westerly therefrom to the north line of the lands of William Merrill; thence easterly along said line and said line produced easterly to the east bank of the Genesee river; thence northerly along the east bank of the Genesee river in its

City Boundaries—Concluded

various courses, to the north line of lot fourteen in the township fourteen, in the seventh range of townships in the town of Irondequoit; thence easterly along the north line of said lot fourteen, to the east line of the lands owned by the Rome, Watertown and Ogdensburg Railroad Company; thence southerly along the east line of lands owned by the said Rome, Watertown and Ogdensburg Railroad Company *as the middle of the Ridge road; thence westerly along the middle of the Ridge road to the place of beginning. (*L.* 1880, *Ch.* 14; *amended L.* 1891, *Ch.* 184; *L.* 1892, *Ch.* 596; *L.* 1894, *Ch.* 28; *L.* 1895, *Ch.* 617; *L.* 1899, *Ch.* 373; *last amended L.* 1901, *Ch.* 572).

§ 4. **Ward Boundaries**—The said city shall be divided into twenty wards as follows:

First Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of the Genesee river, and of the Erie canal; thence running westerly along the center of the Erie canal, to the center of Allen street; thence easterly along the center of Allen street to the center of State street; thence southerly along the center of State street to the center of †Mumford street; thence easterly along the center of †Mumford street to the center of the Genesee river; thence southerly along the center of the Genesee river, to the place of beginning, shall constitute the first ward. (*As amended L.* 1894, *Ch.* 28).

Second Ward Boundaries—All that part of the said city included within a line beginning at the center of the Genesee river and †Mumford street; thence running westerly along the center of †Mumford street to the center of State street; thence northerly along the center of State street to the center of Allen

*So in session laws. Should be "to the middle."
†So in session laws. Now "Andrews street."

street; thence westerly along the center of Allen street to the center of the Erie canal; thence northerly along the center of the Erie canal to Jay street; thence easterly along the center of Jay street and the center line thereof continued easterly, to the center of the Genesee river; thence southerly along the center of the Genesee river to the place of beginning, shall constitute the second ward. (*As amended L.* 1894, *Ch.* 28).

Third Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of the Genesee river and of the Erie canal; thence running westerly along the center of the Erie canal to the center of lands formerly used for the Genesee Valley canal; thence southerly along the center of the said lands formerly used for the Genesee Valley canal to the south line of the Strong tract; thence along the south line of the Strong tract to the center of the Genesee river; thence northerly along the center of the Genesee river to the place of beginning, shall constitute the third ward. (*As amended L.* 1894, *Ch.* 28).

Fourth Ward Boundaries—All that part of said city included within a line beginning at a point in the center of the Genesee river and of *East Main street; thence running easterly along the center of *East Main street to the center of East avenue; thence along the center of East avenue to the center of William street; thence southerly along the center of William street to the center of Monroe avenue; thence southeasterly along the center of Monroe avenue to the center of Alexander street; thence southerly along the center of Alexander street to an angle in said street; thence southwesterly continuing in the center of said Alexander street to the center of the Erie canal; thence northerly in the center of the Erie canal to a

*So in session laws. Now "Main St. East."

point where the center line of Howell street, extended westerly, would intersect said center of the Erie canal; thence westerly on said center line of Howell street, extended, to the center of the Genesee river; thence northerly in the center of the Genesee river to the place of beginning, shall constitute the fourth ward. (*As amended L.* 1894, *Ch.* 28).

Fifth Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of *E. Main street and of the Genesee river; thence running northerly along the center of the Genesee river to a point where a line extended southwesterly through the center of Evergreen street would intersect a line drawn through the center of said Genesee river; thence northeasterly along the said extended line and along the center of Evergreen street to an angle in said street, and thence continuing easterly along the center of said Evergreen street to a point in the center of Conkey avenue; thence northerly along the center line of Conkey avenue to the center of Clifford street; thence easterly along the center of Clifford street to the center of †N. Clinton street; thence southerly along the center of †North Clinton street to the center of *E. Main street; thence westerly along the center of *E. Main street to the place of beginning, shall constitute the fifth ward. (*As amended L.* 1894, *Ch.* 28).

Sixth Ward Boundaries—All that part of the said city included within a line beginning at the center of *E. Main street and North street thence northerly in the center of North street to the center of University avenue; thence easterly in the center of University avenue to the center of *E. Main street; thence easterly in the center of *E. Main street to the center of the tracks of the main line of the New York Central and Hudson River Railroad Co.;

*So in session laws. Now "Main St. East."
†So in session laws. Now "Clinton Av. North."

thence southeasterly in the center of said railroad company's tracks to the east boundary line of the city; thence southerly along the east boundary line of the city to the center of East avenue; thence westerly in the center of East avenue to the center of *E. Main street; thence westerly in the center of *E. Main street to the place of beginning, shall constitute the sixth ward. (*As amended L.* 1894, *Ch.* 281).

Seventh Ward Boundaries—All that part of the said city included within a line beginning at a point at the center of *E. Main street and †N. Clinton street; thence running northerly along the center of †N. Clinton street to a point which would be the intersection of the center line of Nassau street, extended westerly to the center of said †N. Clinton street; thence easterly on said extended line and continuing easterly in the center of Nassau street to the center of ‡St. Joseph street; thence northerly along the center of ‡St. Joseph street to the center of Baden street; thence easterly along the center of Baden street to the center of Hudson avenue; thence northerly in the center of Hudson avenue to the center of Wilson street; thence easterly along the center of Wilson street to the center of North street; thence southerly in the center of North street to the center of *E. Main street; thence westerly in the center of *E. Main street to the place of beginning, shall constitute the seventh ward. (*As amended L.* 1894, *Ch.* 281).

Eighth Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of †N. Clinton street where a line extended westerly through the center of Nassau street would intersect the center line of said †N. Clinton street; thence northerly along the center

*So in session laws. Now "Main St. East."
†So in session laws. Now "Clinton Av. N."
‡So in session laws. Now "Joseph Av."

of *N. Clinton street to the center of Clifford street; thence easterly along the center of Clifford street to the center of †North avenue; thence southerly along the center of †North avenue to an angle in said avenue at or near Syracuse street; thence continuing ‡southeasterly along the center of †North avenue to a point where the center line of †North avenue would intersect the center line of North street; thence northerly in the center line of North street to the center line of Wilson street; thence westerly in the center line of Wilson street to the center of Hudson avenue; thence southerly in the center of Hudson avenue to the center of Baden street; thence westerly along the center of Baden street to the center of ‖St. Joseph street; thence southerly along the center of ‖St. Joseph street to the center of Nassau street; thence westerly along the center line of Nassau street and along said line continued westerly to the place of beginning, shall constitute the eighth ward. (*As amended L.* 1894, *Ch.* 28).

Ninth Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of Jay street and the Erie canal, and running thence easterly along the center of Jay street, and Jay street continued, to the center of the Genesee river; thence northerly in the center of the Genesee river to a point where a line extended northeasterly through the center of ¶Lorrimer street, would intersect the said center line of the Genesee river; thence southwesterly on said extended line, and through the center of ¶Lorrimer street to the center of Fulton avenue; thence northerly along the center of Fulton avenue to the center of Bloss street; thence westerly along the center of Bloss

*So in session laws. Now "Clinton Av. N."
†So in session laws. Now "Portland Av."
‡So in session laws. Should be "southwesterly."
‖So in session laws. Now "Joseph Av."
¶So in session laws. Should be "Lorimer St."

street to the lands used for the State Industrial School; thence southerly along the easterly line of said lands to the south line thereof; thence westerly along the south line of said lands of said State Industrial School, and along said line continued, to the center of the Erie canal; thence southeasterly along the center of the Erie canal to the place of beginning, shall constitute the ninth ward. (*As amended L.* 1894, *Ch.* 28).

Tenth Ward Boundaries—All that part of the said city included within a line beginning at a point where a line extended northeasterly through the center of *Lorrimer street would intersect the center line of the Genesee river; thence northerly in the center of the Genesee river to a point where the northerly line of the city crosses the Genesee river; thence westerly on the said northerly line of the city, and continuing southerly on the said city line, and continuing westerly on the said city line, to a point where the northerly line of the city intersects the westerly line of the city; thence southerly on the westerly line of the city to a point where a line extended westerly through the center of Otis street would intersect the said westerly line of said city; thence easterly along the said extended line and along the center of Otis street, to the center of Sherman street; thence northerly in the center of Sherman street to a point where a line drawn through the center of Sherman street would intersect a line extending westerly from the south boundary line of the lands of the State Industrial School; thence easterly along the said extended line and along the south boundary line of the said lands of the State Industrial School to the southeast corner of the said lands; thence northerly along the east line of the said lands to the center of Bloss street; thence easterly along the center of Bloss street to the center

*So in session laws. Should be "Lorimer St."

of Fulton avenue; thence southerly along the center of Fulton avenue to the center of *Lorrimer street; thence northeasterly along the center of *Lorrimer street and continuing on a line extended northeasterly through the center of said *Lorrimer street to the place of beginning, shall constitute the tenth ward. (*As amended L.* 1894, *Ch.* 28).

Eleventh Ward Boundaries—All that part of the said city included within a line beginning at a point where the center of Bronson avenue would intersect a line drawn through the center of the lands now owned and occupied by the Western New York and Pennsylvania Railroad Company, being the land formerly used and occupied for the Genesee Valley canal; thence westerly along the center of Bronson avenue to the center of Genesee street; thence northerly along the center of Genesee street to the center of Brown street; thence northeasterly along the center of Brown street to a point where a line extended southerly through the center of Saxton street would intersect a line drawn through the center of Brown street; thence northerly on said extended line, and continuing northerly along the center of Saxton street to the center of Jay street; thence easterly along the center of Jay street to a point where said Jay street makes an angle to the northeast; thence northeasterly along the center of Jay street to the center of the Erie canal; thence southerly along the center of the Erie canal to a point where the old Genesee Valley canal formerly connected with said Erie canal; thence southerly along the center of the lands formerly used and occupied by the Genesee Valley canal to the place of beginning, shall constitute the eleventh ward. (*As amended L.* 1894, *Ch.* 28).

*So in session laws. Should be "Lorimer St."

Twelfth Ward Boundaries—All that part of the said city included within a line beginning at a point where a line drawn through the center of East avenue would intersect a line drawn through the center of William street; thence southerly along the center of William street to the center of Monroe avenue; thence southeasterly along the center of Monroe avenue to the center of Alexander street; thence southerly along the center of Alexander street to an angle at or near Cobb street; thence continuing southwesterly along the center of Alexander street to the center of the Erie canal; thence southerly and easterly along the center of the Erie canal to the easterly line of the city; thence northerly along the said easterly line of the city, to where the north line of the Erie canal lands intersect said city line; thence easterly along said Erie canal lands to the east line of town lot thirty-six in the town of Brighton; thence northerly along said east line of said town lot thirty-six to the northeast corner thereof; thence westerly along the north line of said town lot thirty-six, to a point where the same intersects the east line of Leighton avenue; thence northwesterly along a line which produced to the east line of Culver road would intersect the same two hundred fifty-two and four-tenths feet north of where the north line of Park avenue intersects the east line of said Culver road; thence northerly along the easterly line of the city to the center of East avenue; thence westerly along the center of East avenue to the place of beginning, shall constitute the twelfth ward. (*As amended L.* 1895, *Ch.* 617).

Thirteenth Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of the Genesee river where a line drawn through the center of the Genesee river would intersect a line extended westerly through the center of Howell

street; thence easterly on said extended line to the center of the Erie canal; thence southerly and easterly along the center of the Erie canal to the center of Goodman street; thence southerly along the center of Goodman street to the center of Caroline street; thence westerly along the center of Caroline street to the center of South avenue; thence northerly along the center of South avenue to the center of Averill avenue; thence westerly along the center of Averill avenue, and continuing on a line extending westerly through the center of Averill avenue to the center of the Genesee river; thence northerly along the center of the Genesee river to the place of beginning, shall constitute the thirteenth ward. (*As amended L.* 1894, *Ch.* 28).

Fourteenth Ward Boundaries—All that part of the said city included within a line beginning at a point in the center of the Genesee river, where a line drawn through the center of said river would intersect a line extended westerly through the center of Averill avenue; thence easterly on said extended line and along the center of Averill avenue to the center of South avenue; thence southerly along the center of South avenue to the center of Caroline street; thence easterly along the center of Caroline street to the center of Goodman street; thence northerly along the center of Goodman street to the center of the Erie canal; thence easterly along the center of the Erie canal to the easterly line of the city; thence southerly and westerly along the east and south boundary lines of the city, following the various courses of said line to the northerly line of a road known as Elmwood avenue,* about three hundred feet to the division line between said town lots fifty-three and sixty-one; thence southerly along said division line between lots fifty-three and sixty-one, and along

*So in session laws. "thence westerly" omitted.

the division line between town lots fifty-four and sixty-two of said town of Brighton, through land owned by the county of Monroe, and along the easterly line of land formerly owned by Reuben N. Booth and now owned by the state of New York, about three thousand one hundred and twenty feet to land now or formerly owned by Hiram Smith; thence westerly along the division line between the lands owned by the said state of New York, formerly owned by said Booth, and lands of said Smith and along said line prolonged westerly about two thousand three hundred feet to the westerly line of the highway known as South avenue; thence northerly along said westerly line of South avenue about six hundred and ninety feet to an angle in said highway; thence still northerly along said westerly line of South avenue about two thousand two hundred and ninety-five feet to the northerly line of said road known as Elmwood avenue, the city line; thence westerly and southwesterly along the southerly and southeasterly boundary lines of the city, following the various courses of said line to the center of the Genesee river; thence northerly along the center of the Genesee river to the place of beginning, shall constitute the fourteenth ward. (*As amended L.* 1901, *Ch.* 572).

Fifteenth Ward Boundaries—All that part of the said city included within a line beginning at a point where the center of Jay street intersects the center of the Erie canal; thence southwesterly along the center of Jay street to a point at or near the center of Magne street; thence continuing westerly along the center of Jay street to the west boundary line of the city; thence northerly along the west boundary line of the city to a point where a line extended westerly through the center of Otis street would intersect the said west boundary line of said city; thence easterly, on said extended line, and along the center of Otis

street to the center of Sherman street; thence northerly along the center of Sherman street to a point where a line drawn through the center of Sherman street would intersect the south boundary line of the lands of the State Industrial School extended westerly; thence easterly along said extended line to the center of the Erie canal; thence southeasterly along the center of the Erie canal to the place of beginning, shall constitute the fifteenth ward. (*As amended L.* 1894, *Ch.* 28; *changed by L.* 1892, *Ch.* 596, § 2).

Sixteenth Ward Boundaries—All that part of the said city included within a line beginning at a point where a line drawn through the center of North street would intersect a line drawn through the center of University avenue; thence northerly along the center of North street to a point which is the intersection of the center lines of North street and North avenue; thence northeasterly along the center of North avenue to the center of Bay street;* thence easterly along the center of Bay street to the center of Hebard street; thence southerly along the center of Hebard street to the center of the tracks of the New York Central and Hudson River Railroad Company; thence southeasterly along the center of the tracks of the New York Central and Hudson River Railroad Company to the center of †East Main street; thence westerly along the center of †East Main street to the center of University avenue; thence northwesterly along the center of University avenue to the place of beginning, shall constitute the sixteenth ward. (*As amended L.* 1894, *Ch.* 28; *changed by L.* 1892, *Ch.* 596, § 2).

*So in session laws. Should read "along the center of North street and Portland avenue to the center of Bay street."

†So in session laws. Now "Main Street East."

Seventeenth Ward Boundaries — All that part of the said city included within a line beginning at a point in the center of the Genesee river, where a line drawn through the center of the Genesee river would intersect a line extended *southeasterly through the center of Evergreen street; thence northerly along the center of the Genesee river to where the north line of the city crosses the Genesee river; thence following the boundary line of the said city northerly to the north boundary point of the said city; thence southerly along the east boundary line of said city to a point where said boundary line intersects said north boundary line at Norton street; thence easterly along the north boundary line of said city to a point where the northerly boundary line of the city intersects the east boundary line of the city; thence southerly and southeasterly along the easterly boundary line of the city to the center of Clifford street; thence westerly along the center of Clifford street to the center of Conkey avenue; thence southerly along the center of Conkey avenue to the center of Evergreen street; thence westerly along the center of Evergreen street and continuing southwesterly along said center line, and continuing on a line extended southwesterly through the center of said Evergreen street to the place of beginning, shall constitute the seventeenth ward. (*As amended L.* 1894. *Ch.* 28; *changed by L.* 1899. *Ch.* 373, § 2).

Eighteenth Ward Boundaries — All that part of the said city included within a line beginning at a point where a line drawn through the center of †North avenue would intersect a line drawn through the center of Clifford street; thence easterly along the center of Clifford street to the easterly boundary line of the city; thence southerly along the

*So in session laws. Should be "southwesterly."
†So in session laws. Now "Portland avenue."

easterly boundary line of the city to the center of the New York Central and Hudson River Railroad Company's tracks; thence northwesterly along the center of said company's tracks to the center of Hebard street; thence northerly along the center of Hebard street to the center of Bay street; thence westerly along the center of Bay street to the center of *North avenue; thence northerly along the center of *North avenue to the place of beginning, shall constitute the eighteenth ward. (*As amended L. 1894, Ch. 28*).

Nineteenth Ward Boundaries—All that part of the said city included within a line beginning at a point where the center of Bronson avenue would intersect a line drawn through the center of the lands now owned and occupied by the Western New York and Pennsylvania Railroad Company, being the land formerly used and occupied by the Genesee Valley canal; thence westerly along the center line of Bronson avenue to the center of Genesee street; thence northerly along the center of Genesee street to the center of West avenue; thence westerly along the center of West avenue to the center of Chili avenue; thence southwesterly along the center of Chili avenue to the westerly boundary line of the city; thence southerly on the westerly city line, in its various courses, to a point where the said westerly line of the city intersects the southerly line of the city; thence easterly and southerly, following the said city line, in its various courses, until the said line intersects a line drawn through the center of the Genesee river; thence northerly, in the center of the Genesee river, in its various courses, to a point where a line drawn through the center of the said Genesee river would intersect the south line of the Strong tract; thence †northwesterly along the south

*So in session laws. Now "Portland avenue."
†So in session laws. Should be "westerly."

line of the Strong tract to the center of the tracks of the Western New York and Pennsylvania Railroad Company; thence northerly, along the center of the tracks of said railroad company, to the place of beginning, shall constitute the nineteenth ward. (*As amended L.* 1894, *Ch.* 28; *changed by L.* 1899, *Ch.* 373, § 2).

***Twentieth Ward Boundaries**—All that part of the said city included within a line beginning at a point where a line drawn through the center of Genesee street would intersect a line drawn through the center of West avenue; thence westerly along the center of West avenue to the center of Chili avenue; thence

*So in session laws. The description should be as follows: Twentieth Ward—All that part of the said city included within a line beginning at a point where a line drawn through the center of Genesee street would intersect a line drawn through the center of West avenue; thence westerly along the center of West avenue to the center of Chili avenue; thence southwesterly along the center of Chili avenue to the present city line; thence northerly along the present city line to the north line of Chili avenue; thence southwesterly along the north line of Chili avenue to the west line of a street known as Gardiner avenue; thence northerly along the west line of Gardiner avenue sixty feet; thence westerly at right angles with Gardiner avenue seventy-five feet; thence southerly parallel with said Gardiner avenue to the aforesaid northerly line of said Chili road; thence southwesterly along the northerly line of said Chili road to the easterly line of a highway called Lincoln avenue; thence northerly along the easterly line of said Lincoln avenue to the south line of the highway called the Buffalo road; thence easterly along the southerly boundaries of said Buffalo road to the present westerly city line; thence northerly along the present westerly city line to the center of Jay street; thence easterly along the center of Jay street to the center of Saxton street; thence southerly along the center of Saxton street, and on a line extended southerly through the center of Saxton street, to the center of Brown street; thence southwesterly along the center of Brown street to the place of beginning; the said westerly boundary lines being a part of the present westerly boundary line of the city; and the said part of the said city included within said lines, shall constitute the twentieth ward.

southwesterly along the center of Chili avenue, and continuing southwesterly along the center of a road formerly known as the Chili road to the easterly line of a highway called Lincoln avenue; thence northerly along the easterly line of said Lincoln avenue to the south line of the highway called the Buffalo road; thence easterly along the southerly boundaries of said Buffalo road to the present westerly city line; thence northerly along the present westerly city line to the center of Jay street; thence easterly along the center of Jay street to the center of Saxton street: thence southerly along the center of Saxton street, and on a line extended southerly through the center of Saxton street, to the center of Brown street; thence southerly along the center of Brown street to the place of beginning; the said westerly boundary lines being a part of the present westerly boundary line of the city; and the said part of the said city included within said lines, shall constitute the twentieth ward. (*As amended L.* 1894, *Ch.* 28).

§ 5. **Territory included from Irondequoit, Brighton, Gates and Greece** The territory taken from the towns of Irondequoit, Brighton, Gates and Greece, and the personal property of the inhabitants thereof now residing thereon, included within the enlarged city boundaries, so long as they shall continue to reside thereon, shall be exempt from the payment of any part of the present city debt which was contracted for bounties for soldiers or for the relief of soldiers' families, or for the construction of water-works, or which may hereafter be contracted for the construction or completion of water-works, or any interest that may accrue thereon under and by virtue of chapter three hundred and eighty-seven of the laws of eighteen hundred and seventy-two, or for the expenses of lighting the city, or for the debts embraced in what are known as the "deficiency bonds" of the city. Whenever, how-

ever, a majority of the taxpayers upon a street within the territory so annexed shall petition for the extension of the water mains or lamps upon such street for their benefit, the taxable property and residents on said street shall become jointly liable upon their assessment in said territory with the old territory of said city for such portion of the water debt, if they petition for water mains, as may then remain unpaid, or if they petition for lights their proportion for lighting said city. And it is hereby further provided that the towns from which the territory hereby annexed to the city of Rochester is taken shall be released from the support of all paupers who are actual residents upon the territory so taken, and they shall thereupon become a charge upon the city of Rochester. The assessors of said city are hereby required to prepare an assessment-roll for said new part of said twelfth ward created by this act and deliver to the supervisor of said ward for the use of the board of supervisors of Monroe county on or before the first day of October, eighteen hundred and ninety-five. (*As amended L.* 1895, *Ch.* 617).

ARTICLE II

LEGISLATIVE DEPARTMENT

SEC. 12. **Legislative power vested in common council**—The legislative power of the city is vested in the common council thereof, and it has authority to enact ordinances, not inconsistent with the laws of the state, for the government of the city and the management of its business, for the preservation of good order, peace and health, for the safety and welfare of its inhabitants, and the protection and security of their property; and its authority, except as otherwise provided in this act, or by other laws of the state is legislative only. (*L.* 1898, *Ch.* 182).

MEMORANDUM OF DECISIONS ON ORDINANCES

Authorities collated as to the proper exercise of police power—Village of Carthage vs. Frederick, 122 N. Y. 268.

Ordinances have the force of statutes—Village of Carthage vs. Frederick, *supra*; City of Buffalo vs. N. Y. L. E. & W. R. R. Co. 152 N. Y. 276, (1897); People ex rel. Cumisky vs. Wurster, 14 App. Div. 556, (1897); **and cannot be collaterally impeached**—Consumers Gas Co. vs. Consumers Springs Co. 61 Hun 133, (1893); **may be partly void**—Duryee vs. Mayor, 96 N. Y. 477, (1884).

Ordinances must be reasonable—Village of Carthage vs. Frederick, *supra*; City of Brooklyn vs. Nassau El. R. R. Co. 38 App. Div. 365, (1899); City of Buffalo vs. Collins Baking Co. 39 App. Div. 432, (1899).

Reasonable as to one state of facts may be unreasonable as to another—Ford vs. Standard Oil Co. 32 App. Div. 500 (1898).

Rules have not the force of ordinances—Armitage vs. Fisher, 74 Hun 167.

Publication essential to validity—Kneib vs. People, 6 Hun 238.

Extent of the words "to license and regulate"—Cronin vs. People, 28 N. Y. 318; City of Buffalo vs. Schleifer, 51 St. Rep. 58; City of Brooklyn vs. Nodine, 26 Hun 512.

If the common council authorizes a nuisance, the city becomes liable—Spier vs. City of Brooklyn, 130 N. Y. 6.

Ordinances must apply to citizens of all parts of state alike—General Municipal Law, § 27.

Contracts in violation of ordinances are void—Burger vs. Kavelsch, 77 Hun 44, (1894).

General statute on same subject does not render ordinance void—Polinsky vs. People, 11 Hun 300, (1877).

Repeal revives former ordinance—Mayor vs. Broadway, etc. R'y Co., 97 N. Y. 275, (1884).

Extent of ordinances regulating the use of bicycles—L. 1899, Ch. 634; regulating automobiles—Highway Law as amended, L. 1903, Ch. 625.

See also article on "Ordinances," Am. & Eng. Enc. Law, 2d Edn., Vol. XXI, pp. 943–1004.

§ 13. **Aldermen and president of common council; salaries**—There shall be elected at the first election under this act, and at the city election every two years thereafter, a president of the common council from the city at large, who shall receive an annual salary of one thousand dollars, and one alderman from each ward of the city, who shall have been a resident in such ward for at least five months prior to such election, who shall hold their offices for two years; and the aldermen thus elected shall constitute the common council. The annual salary of each alderman shall be, in a city having a population, as appears by the last state enumeration, of less than one hundred thousand, five hundred dollars; in a city having a population of more than one hundred thousand, as aforesaid, seven hundred and fifty dollars. (*As amended L.* 1902, *Ch.* 221. *See also L.* 1901, *Ch.* 534, *L.* 1902, *Ch's.* 3 *and* 4).

General powers and duties of aldermen—See note under § 34 White Charter, this book, *post*.

Payment of salary to *de facto* a defence against *de jure* alderman—Demarest vs. Mayor, etc., 147 N. Y. 203.

Legislature cannot pass retroactive measures as to salaries of aldermen—Young vs. City of Rochester, 73 App. Div. 81.

§ 14. **Meeting of common council; duties of president**—The members of the common council shall meet in the room provided for that purpose on the second day of January after their election, or if that be Sunday, then on the next day. The president shall preside at all meetings and discharge such other duties as president as may be defined by ordinances of the common council and other provisions of this act. The common council may, at any regular meeting, choose one of its members president, with like powers, to fill a permanent vacancy in the office, and in like manner it may choose a president pro tempore to act during the temporary absence or inability of the president. In case of a vacancy in that office, until it shall fill the vacancy as above provided, the mayor shall preside over its meetings. But in case of a vacancy or until a president has been chosen it shall transact no business except to adjourn from time to time. The president may vote like other members of the common council upon all resolutions and ordinances submitted to the body for its action, in case of a tie vote. (*L.* 1898, *Ch.* 182).

The President of the council can only vote in case of a tie—People ex rel. Argus Co. vs. Bresler, 70 App. Div. 294; affirmed, 171 N. Y. 302.

§ 15. **City clerk and assistants**—The common council shall choose a clerk, to hold office during the term for which its members were elected, unless sooner removed by a vote of three-fourths of all the members of the common council. He shall be the city clerk, and shall attend the meetings of the common council, keep a journal of its proceedings, and discharge such other duties as may be prescribed by the city ordinances. He may appoint to hold office during his pleasure a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. The president, clerk and deputy clerk of the common council shall each have the powers of commissioners of deeds. (*As amended L.* 1920, *Ch.* 273).

White Charter

General duties of city clerks in regard to elections—The Election Law. (For full information as to primaries and elections, see "Jewett's Manual for Election Officers and Voters").

Oaths of office to be filed with city clerk—Public Officers Law, § 10.

Marriage certificates to be filed with city clerk—Domestic Relations Law, § 15; amended L. 1901, Ch. 330.

Trial jury list to be filed annually with the city clerk—L. 1880, Ch. 441, § 12.

Deposit of books and papers with city clerk—Code Civil Proc., §§ 3144–3148, inclusive.

Laws affecting city to be sent to city clerk, and by him kept on file—Legislative Law, § 49; as amended, L. 1893, Ch. 132; L. 1894, Ch. 138, and L. 1896, Ch. 259.

Enrollment of persons liable for military service to be filed with city clerk—Military Code, §§ 2, 4.

Notice of application for final naturalization papers to be served on city clerk—L. 1895, Ch. 927, §§ 4–8. (For the laws of the United States governing naturalization, see U. S. Revised Statutes, §§ 2165–2174, 5424–5429, 1992–1994, 1999 and 2000. As to naturalization certificates, see Election Law, § 34, subdiv. 8, and Penal Code, §§ 41x, 41y).

Post commander G. A. R. shall file notice with city clerk—Penal Law, § 81.

Minutes of hearings before assessors, and tax roll to be filed with city clerk—Tax Law, §§ 30 and 38.

Old Charter

§ 29. **City clerk to report persons elected and appointed**—At the expiration of ten days after any election or appointment of any officer or officers in the said city, the clerk of the said city shall deliver to the common council a list of the persons elected or appointed; and of the offices to which they are chosen, therein specifying such as shall have filed with him the oath of office or notice of acceptance required by law, and such as shall have omitted to file the same within the time herein prescribed. (*L.* 1880, *Ch.* 14).

§ 55. **Powers and duties of city clerk** —The clerk shall attend the meetings of the common council, and keep a record of its proceedings, and shall have the custody of the corporate seal, and shall keep all papers that, by any provision of law, or by the direction of the common council, are required to be filed with or kept by him. Copies of all papers filed in his office, and transcripts from the record of the proceedings of the common council, certified by him under the corporate seal, shall be evidence in all places of the matters therein contained. He shall countersign all licenses granted for any purposes by the mayor or common council, and he shall enter in an appropriate book the name of every person to whom a license shall be granted, the date thereof, and the time during which it is to continue in force, and the sum paid for such license. No license for any purpose granted [*shall be valid] unless thus countersigned by the clerk. No license shall be valid until the sum of money required therefor shall be fully paid in advance to the treasurer. It is hereby made the duty of the city clerk to call upon the chief of police for a detail of one or more policemen to enforce the penal ordinances of said city in relation to all persons required to take out licenses, and he shall report to the corporation counsel for prosecution all violations of said ordinances that may come to his knowledge. There shall be an assistant city clerk, who shall be appointed by the common council as herein provided, and who shall have the same powers as the city clerk whenever the city clerk is absent from the city, or is incapable of performing the duties of his office by reason of sickness or otherwise, and shall have such powers as the common council may from time to time prescribe, not inconsistent, however, with the provisions of this act, he shall receive such

Old Charter

Powers and duties of city clerk—Continued

compensation for his services as the common council may from time to time prescribe, and shall give a bond upon the same terms and for the same amount as the city clerk. The city clerk shall, within five days after the close of each session of the common council, cause the proceedings thereof to be published in the official newspaper of said city, and in case such official newspaper has not been selected, he shall cause the same to be published in such newspaper as he may designate. (*As amended L.* 1897, *Ch.* 784).

NOTE—See White Charter § 47, as to present custody of city seal; as to deputy city clerk, § 15; as to publishing proceedings, § 22.

§ 16. **Special meetings of common council**—The president of the common council, or a majority of its members may call a special meeting by causing a written notice thereof, specifying the objects of the meeting, to be served by the city clerk upon each member personally, or by mail, directed to his place of residence or place of business, at least twenty four hours before the time of such meeting. (*L.* 1898, *Ch.* 182).

§ 17. **Meetings and rules of common council**—The common council shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its members. Its meetings shall be public and its records open to public inspection, and, except as herein provided, a majority of all its members shall be a quorum for the transaction of business. The passage of an ordinance, unless otherwise herein provided, shall require the affirmative vote of at least a majority of all its members. (*L.* 1898, *Ch.* 182).

§ 18. **Forbidden acts of common council members**—No member or committee of the common council has power to employ

any person, incur any expense or purchase any material for or on behalf of the city or any of its officers, boards or commissions, except as otherwise expressly provided in this act. (*L.* 1898, *Ch.* 182).

Officers exceeding their powers—See note under § 25 White Charter, this book, *post.*

§ 19. **Ordinances as to appropriations and franchises**—No ordinance shall be passed by the common council on the same day in which it is introduced, except by unanimous consent, and no appropriation of money shall be made for any purpose, except by an ordinance, passed by two-thirds of all the members, specifying by items the amount thereof and the department or specific purpose for which the appropriation is made; and no ordinance shall be passed making or authorizing a sale or lease of city real estate or of any franchise belonging to or under the control of the city, except by a vote of two-thirds of all the members of the common council; and in case of the proposed sale of real estate or the proposed sale or proposed lease of a franchise, the ordinance must provide for a disposition under proper regulations for the protection of the city, at public auction, after public notice for at least three weeks, to the highest bidder; and a proposed sale or proposed lease thus originated shall not be valid nor take effect, unless the aforesaid notice shall have been given and the aforesaid disposition, namely, a sale at public auction to the highest bidder shall have been had, and unless subsequently approved by a resolution of the board of estimate and apportionment. No such franchise shall be granted or be operative for a period longer than fifty years. (*As amended L.* 1902, *Ch.* 177).

When the legislature confers a right of franchise subject to the assent of the city, such assent, when granted, cannot be revoked—Del. L. & W. R. R. Co. vs. Buffalo, 63 Hun 404.

Tax budget illegal unless passed by required vote—Kirk vs. McGuire, 32 Misc. 576, [illegible]

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§ 20. **When ordinances become operative**—No ordinance of the common council shall become operative until it has been enrolled and attested by the clerk and signed and approved in writing by the mayor, or passed over his veto, and, whenever the same may be necessary, promulgated according to law; and every ordinance imposing a penalty or forfeiture for the violation thereof shall, before the same shall take effect, be published at least three times in each week for two successive weeks in the official newspapers of the city, provided, that in case of insurrection, riot, pestilence, conflagration or other public necessity requiring immediate operation of such ordinance, it shall take effect as soon as proclamation thereof has been made by the mayor, and it, with such proclamation, has been posted in five public places in each ward of the city. (*L.* 1898, *Ch.* 182)

Old Charter

§ 44. **Ordinances as evidence** Every ordinance, rule and regulation of the common council, and of the executive board, imposing a penalty or fine, unless a different time shall be prescribed therein, shall commence and take effect on, and not before, the tenth day after the day of its adoption or passage, and shall continue in force until otherwise ordered by the common council or executive board passing or adopting the same. A record or entry made by the clerk of said city, or of said executive board or a copy of such record or entry duly certified by said clerk shall be *prima facie* evidence thereof. Such record or entry, and all laws, regulations and ordinances and any act, resolution, by-law, rule or proceeding, and any recital of any occurrence taking place at any meeting of the common council or said executive board, may be read in evidence in all courts of justice, and in all

Old Charter

Ordinances as evidence—Continued

proceedings before any officer, body or board, in which it shall be necessary to refer thereto, either :

1. From a copy thereof, certified by such clerk, in case it is signed by the city clerk with the seal of the corporation affixed, and—

2. From the volume printed by authority of the common council or said executive board, and any printed volume or pamphlet which purports to be a copy of such ordinances, resolutions, proceedings or minutes, shall also be received as presumptive evidence thereof, and of the due adoption and publication thereof when required at the time therein purported, and provided such pamphlet or volume purports to have been published by order or direction of the common council or the executive board, or to contain such ordinances, resolutions, proceedings or minutes. In every court held by said police justice and said municipal court, judicial notice shall be taken of every ordinance aforesaid. (*As amended L.* 1899, *Ch.* 561).

Minutes of common council only *prima facie* evidence—Bell vs. City of Yonkers, 78 Hun 1.6.

Documentary evidence — See Code of Civil Procedure, § 711.

§ 21. **Ordinances subject to the mayor's veto power**—Every ordinance of the common council shall, immediately upon its enrollment and signature by the president and clerk, be presented by the clerk to the mayor. If he approve it, he shall sign it and return it to the clerk, and it shall take effect. If he neglect to approve, sign and return it to the clerk within ten days after receiving it, and he does not disapprove it within that time as herein provided, then it shall take effect as if he had approved and signed it. If he disapprove it, he shall, within the same time, return it to the clerk with his

White Charter

objections in writing, and the clerk shall present the same with such objections to the common council at its next regular meeting; and then the common council shall, within thirty days thereafter, reconsider the same; and unless three-fourths of all the members of the common council, and if a greater number of members were necessary, according to the provisions of this act, for the original passage of the ordinance, then as many members as were requisite for the original passage of the ordinance, shall vote to pass the ordinance, it shall not take effect; but if the requisite number of members so vote, then the ordinance shall take effect as if approved and signed by the mayor. When an ordinance appropriating money contains several items, and when an ordinance embraces more than one distinct subject, the mayor may approve the provisions relating to one or more items or one or more subjects and disapprove the others. In such cases those items or subjects which he shall approve shall become effective, and those which he shall not approve shall be reconsidered by the common council and shall only become effective if again passed by it as above provided; and the foregoing provision in reference to approval and disapproval, and failure to return an ordinance within ten days after the receipt of the same, shall be applicable to and govern such cases. (L. 1898, ch. 151.)

Mayor must state reasons for veto. [illegible] Hun 574.

Law must be strictly construed as to action on veto. [illegible] Peerless Manuf. Co., 4 App. Div. [illegible] 163 N. Y. 544.

NOTE.—The Old Charter outlined a different procedure for the consideration of the common council ordinances by the mayor, and extended the veto power over the acts of the board of education as follows:

Old Charter

§ 48. **Veto power of the mayor.**—Before any ordinance, resolution or order of the common council concerning any pub-

Veto power of the Mayor—Continued

lic improvement, or for the payment of money, or any ordinance, resolution or act of a legislative character, passed by the common council, shall have any force or effect, a transcript of such ordinance, resolution, order or act shall be presented to the mayor for his approval. If he approves, he shall indorse his approval thereon in writing and sign such approval; if he disapproves, he shall return such transcript to the common council or clerk thereof, with his objections and reasons for disapproval, in writing, which shall be filed by the clerk, and the common council shall, within thirty days thereafter, proceed to consider such veto, and if the same shall be overruled by a two-third vote of all the members of the common council then in office, the matter vetoed shall have full force and effect, notwithstanding the objections of the mayor. If any ordinance, resolution or act shall consist of one or more items or parts, any of the items or parts may be vetoed by such mayor. If any such transcript with such objections and reasons shall not be returned by the mayor to the common council or clerk within five days after the transcript shall have been presented to him, Sundays excepted, such ordinance, resolution, order or act shall have full force and effect in like manner as if duly approved by the mayor, unless the term of office of the mayor shall expire within five days after such transcript shall have been presented to him, in which case such ordinance, resolution or act shall have no force. The provisions of this section are hereby made applicable to all acts, resolutions or orders of the board of education done or passed by said board, and all returns of transcripts, with the approval or disapproval of the mayor and his objections, shall be made to the board of education or to the clerk thereof; but this section shall not apply to any penal ordinance, rule or regulation, nor to any action of the common

council in relation to appointments to, or removals from, office, or to the reduction of the number of policemen. (*As amended L.* 1897, *Ch.* 784).

Board of education subject to provisions of Old Charter (L. 1848, Ch. 160, § 126); White Charter continues and enlarges powers of mayor (§ 50. See also Pryor vs. City of Rochester, 100 N. Y. 548), powers of board of education not enlarged by White Charter; consistent statutes continued by White Charter (§ 4830).

§ 22. **Ordinances shall be recorded**—Every ordinance shall, within a reasonable time after it becomes a law, as herein provided, be recorded in a book kept for that purpose by the clerk. Such record shall include the signature of the president, attestation of the clerk and the mayor's written approval, or in case of his disapproval, a memorandum of its passage over his veto; or, in case the ordinance took effect because he failed to approve or disapprove and return it within the ten days, then a memorandum to that effect; and as soon as the due publication is complete a certificate thereof shall be added to such record. Such record, or a certified copy thereof, shall be presumptive evidence of the passage of an ordinance. (*L.* 1898, *Ch.* 182).

§ 23. **Violations of ordinances a misdemeanor; actions for violations**—Any person violating an ordinance of the common council shall be guilty of a misdemeanor, and the common council may provide by a general ordinance, or in any ordinance, that any person guilty of such violation shall be liable to fine which shall not exceed one hundred and fifty dollars in amount, or to imprisonment not exceeding one hundred and fifty days, or to pay to the city a penalty not exceeding five hundred dollars to be recovered in a civil action, or to both fine and imprisonment. The city may maintain an action in a court of competent jurisdiction to restrain by injunction the violation of any ordinance of the common council or of the com-

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missioner in charge of the health department, notwithstanding that an ordinance may provide a penalty for its violation. (*As amended L.* 1899, *Ch.* 581).

For jurisdiction of police justice over violations of ordinances, — § 105 White Charter, this work, *ante*.

Old Charter

§ 43. **Common council may prescribe penalties and enforce same**—Where, by the provisions of this act, the common council have authority to pass ordinances on any subject, they may prescribe any penalty or penalties, not exceeding one hundred and fifty dollars in amount, except when a penalty is herein otherwise provided for, for a violation thereof, and may prescribe and provide such penalty or penalties that the offender shall be subject to a fine of not less than a sum fixed by them, and not more than some certain sum likewise fixed not exceeding said one hundred and fifty dollars, to be imposed by the police justice or judge or court before whom a suit for such penalty or penalties is brought. The amount so imposed to be in the discretion of such justice, judge or court, but within the limits of the sums so fixed; and said common council may also provide that the offender, on failure to pay the penalty recovered, shall be imprisoned in the Monroe county penitentiary for a term not exceeding one hundred and fifty days, which penalty may be sued for and recovered, with costs, in the name of the city of Rochester; the duration of the imprisonment may, unless otherwise specified in the ordinance, be determined by such justice, judge or court at the time the judgment is entered, but shall be within the limits aforesaid, and of the ordinance passed by said common council. Every execution upon a judgment recovered for any penalty or forfeiture imposed for the violation of any ordinance

of the corporation may be issued immediately on the rendition of the judgment, and shall command the amount to be made of the personal property of the defendant within the city, not exempt from levy and sale under an execution, if any such can be found, and if not, then to commit the defendant to the Monroe county penitentiary for such time as shall have been directed by the common council or such justice, judge or court as herein provided, and may be issued to, and enforced by, any member of the police department of the city. And the police justice or police clerk of the city of Rochester may issue an execution upon any judgment heretofore or hereafter rendered by a police justice of said city. (*As amended L. 1897, Ch. 561.*)

§ 24. **Executive functions, by whom exercised.** Whenever an executive or administrative function shall be required by an ordinance of the common council to be performed, the same shall be performed by the proper executive or administrative officer or department, to be designated in the ordinance, and in case no such designation be thus made, the mayor shall make the same. (*L. 1898, Ch. 182.*)

Omission of duty by public officer a misdemeanor. (Penal Code, § 151.)

Commission of prohibited act a misdemeanor. (Penal Code, § 141.)

§ 25. **Common council may regulate duties of officials and investigate departments.** The common council may, by ordinances passed by two-thirds of all its members, not inconsistent with the provisions of this act, or other laws of the state, regulate the powers and duties of any city officer or department; and it has power to investigate all city officers and departments, and shall have access to all records and papers kept by every city officer or department, and has power to compel the attendance of witnesses and the production

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of books, papers or other evidence, at any meeting of the common council, or of any committee thereof, and for that purpose may issue subpœnas signed by its president. (*L.* 1898, *Ch.* 182).

Municipal corporation not bound where the officers fail to pursue strict requirements of law under which they are acting and no subsequent act can bind the corporation—Smith vs. City of Newburgh, 77 N. Y. 130; Dickinson vs. City of Poughkeepsie, 75 N. Y. 65; McDonald vs. Mayor, 68 N. Y. 23; Village of Fort Edward vs. Fish, 156 N. Y. 363.

§ 26. **Creation of temporary and funded debts.** The common council is authorized to create temporary and funded debts on the part of the city for the various purposes authorized or contemplated by this act and otherwise by law. The creation of temporary and funded debts is governed by the provisions of the municipal law, being chapter six hundred and eighty-five of the laws of eighteen hundred and ninety-two and the amendments thereto, except as otherwise provided by this act. An ordinance authorizing a funded debt shall, before it can take effect, be submitted to and approved by the board of estimate and apportionment by an affirmative vote of at least four members of the board. Every funded debt shall be issued in such amounts and shall fall due at such times that the principal of the same shall be fully paid in twenty equal annual payments, the last of which shall become due at the end of twenty years after its issue. Nor shall any such annual payment, nor all of them, be refunded, but provisions shall be made for their payment in the year in which each fall due, by insertion of the proper sum in the annual estimates for the year in question. (*As amended L.* 1899, *Ch.* 581).

As to funded debts and municipal bonds, see General Municipal Law, §§ [illegible]

Funded debt defined—People ex rel. Peene vs. Carpenter, 31 App. Div. [illegible]

Money to pay bonds must be provided—Marsh vs. Town of Little Valley, 64 N. Y. 112 [illegible]

Provisions as to funded debts an enabling act for cities—City of Poughkeepsie vs. Quintard, 130 N. Y. 575 (1892).

Protection of municipal bond holders—L. 1895, Ch. 792.

Limitation of city debt—State Constitution, Art. VIII, § 10.

Power to borrow money limited by law—Wells vs. Town of Salina, 119 N. Y. 286; distinguished, Birge vs. Berlin Iron Bridge Co., 133 N. Y. 477 (1892), at p. 486.

Constitutional debt limit discussed generally—Knowlesto vs. City of Rochester, 70 App. Div. 404.

§ 27. **Vacancy in office of alderman, and expulsion of members**—In case of a failure to elect an alderman of any ward at a proper election, and in case of a vacancy from any cause in the office of alderman from any ward, the common council may choose a qualified resident of the same ward to fill the office for the term or the remainder thereof. But in case of a vacancy from any cause, except for a failure to elect, the person so chosen must be of the same political party as the alderman whose place he is chosen to fill. The common council may compel the attendance of absent members at any meeting properly called and may punish or expel a member for disorderly conduct, for a violation of its rules, or for official misconduct, or declare his seat vacant by reason of absence, provided such absence has continued for the space of two months; but no expulsion shall take place, and no vacancy on account of absence be declared, except by the vote of three-fourths of all the members of the common council, nor until the delinquent member has had an opportunity to be heard in his defense. (Z., 1898, Ch. 382.)

Vacancies generally—See Public Officers Law, § 30.

§ 28. **Legislative acts to be by ordinances on yea and nay vote**—All the legislative acts of the common council shall be

by ordinances, and on the passage of every ordinance, the yeas and nays of the members shall be taken and entered in full in the journal. (L. 1865, ch. 181.)

§ 29. **Designation of official newspaper**—At the first meeting of the common council after the election of its members, it shall, by a *viva voce* vote, designate two daily newspapers published in the city to be the official papers of the city. Each member shall be entitled to vote for one of the papers, and the two papers having the highest number of votes shall be the official papers for two years and until others are designated. Such papers shall publish the proceedings and ordinances of the common council and all other matters required by law, or by ordinances of the city to be published. In case any of the official papers shall refuse or fail to act or perform as such, the common council may designate another paper in its place. Provided that if any city contains a population of less than ninety thousand inhabitants as appears by the last state enumeration, instead of the proceedings above set forth, the common council shall, within thirty days after the first meeting of its members, meet and designate by *viva voce* vote the two daily newspapers published in the said city which have the largest circulation and are of opposite political faith and also the two weekly newspapers published in the said city which have the largest circulation and are of opposite political faith as the official newspapers of the city, for two years and until others are designated. The official newspapers heretofore designated in a city which contains a population of less than ninety thousand inhabitants as aforesaid, shall continue as such until the day herein fixed for the first designation of official newspapers and shall then cease to be the official newspapers, unless again designated as herein provided. All bills and accounts for publication in official newspapers, and all city printing and advertising shall be a city charge, and shall

be paid by the treasurer upon the audit of the comptroller. (*As amended L.* 1903, *Ch.* 182).

The president of the common council cannot vote for official newspaper—People ex rel. Argus Co. vs. Bowler, 6 App. Div. 1 affirmed 151 N. Y. 592.

Changing paper after designation—People ex rel. Union and Advertiser Co. vs. Board of Supervisors of Monroe County, 11 Hun 332.

§ 30. **Changing name or grade of streets.** The common council shall not alter the name of any street (except upon a petition of a majority of the owners of abutting lots), nor shall it change the grade of any street which has been legally established, except upon a vote of two-thirds of all the members of the common council, and except also upon compensation for damages done, to be ascertained as damages are ascertained under the condemnation law for lands taken. (*As amended L.* 1901, *Ch.* 554).

§ 31. **Ordinances prior to January 1st, 1900.** The common council shall, prior to the year nineteen hundred, pass ordinances, to take effect January first, nineteen hundred, to give effect and operation to the provisions of this act; but it shall not at any time pass any ordinance directing or interfering with the exercise of the executive functions of the officers, departments and boards of the city as provided by this act or the other laws of the state. (*L.* 1898, *Ch.* 183).

§ 32. **Printing and distribution of minutes of common council.** The minutes of each meeting of the common council shall be printed in full within six days after its adjournment and immediately distributed, one to the mayor, one to each member of the common council, one to the head of each department, and one to every taxpayer, entitled thereto under section four hundred and seventy-two of this act. At the end of the year the printed minutes shall be indexed and bound in adequate number. (*L.* 1898, *Ch.* 183).

§ 33. **Appointments by *viva voce* vote.** All appointments or designations made by the common council shall be by *viva voce* vote. (*L.* 1898, *Ch.* 182).

§ 34. **Ordinances and bonds for local improvements.** The common council may, by and with the advice and consent of the board of estimate and apportionment, fix and determine the amount and proportion of the expense which shall be borne by the city at large for opening, altering, grading, curbing or paving a street, or for constructing a public sewer therein, which is not less than twenty inches in diameter. The amount and proportion of the expense of such improvements which shall be borne by the city at large shall be assessed and charged against and upon the real and personal property liable to taxation in the city. Such amount may be inserted in the tax budget and raised by tax, or it may be borrowed and raised by the city by the issuing of its bonds in accordance with the provisions of section twenty-six of this act, as shall be determined by the board of estimate and apportionment. The moneys to pay such bonds when due, together with the interest accruing thereon from time to time, shall be raised by taxation as other moneys are raised by taxation in the city and shall be paid into the general funds of the city. Such bonds as they mature, together with the interest thereon, shall be paid out of said general funds. The proportion of the expense which is not borne by the city shall be assessed and charged upon the property benefited by such improvements as hereinafter provided. (*As amended L.* 1899, *Ch.* 581).

NOTE.—§§ 35–41, inclusive, omitted in White Charter as first enacted.

Powers of common council over streets. §§ 125, 143, 146, and 149, White charter, this book. See Index.

IN ADDITION TO THE PROVISIONS OF THE CHARTER, OTHER LAWS PROVIDE THAT THE COMMON COUNCIL MAY:

Build canal bridges. The Canal Law, §§ 117–118.

Powers of common council—Continued

Build river bridges—L. 1888, Ch. 303; L. 1892, Ch. 519.

Submit question to people of building bridges—General City Law, §§ 70–80.

Collect license fees from persons selling goods on the canal—General City Law, § 8.

Acquire land for cemetery purposes—L. 1869, Ch. 727, amended L. 1870, Ch. 760; §§ 2 and 3 re-enacted, L. 1873, Ch. 152, amended L. 1875, Ch. 206; L. 1892, Ch. 518; L. 1898, Ch. 543.

Pass ordinances for enforcement of act relating to storage of oils—Domestic Commerce Law, § 27.

Prevent encroachments in Genesee river—L. 1893, Ch. 449, § 7.

Direct lease of public buildings at nominal rent to veteran organizations—General Municipal Law, § 20; White Charter, § 132.

Levy annual taxes for private parks—L. 1888, Ch. 98, as amended L. 1888, Ch. 198; L. 1889, Ch. 411.

Issue bonds for advances upon local assessments—L. 1888, Ch. 468.

Erect and maintain life saving apparatus on river or other waters—L. 1906, Ch. 342.

By its committees conduct investigations, administer oaths and summon witnesses—Old Charter, §§ 30, 33, 34; now see General City Law, §§ 5–7.

Prevent the use of soft coal in public institutions—General City Law, § 9.

Have hearing on city bills received from legislature—General City Law, §§ 30–35.

Appropriate money for support of charitable institutions—L. 1895, Ch. 754; as amended L. 1902, Ch. 155.

Appropriate $10,000 annually for the purchase of works of art—General City Law, § 126.

Establish and maintain libraries—General Municipal Law, § 11.

Powers of common council—Continued

Adopt voting machines—Election Law, §§ 10[illegible]

ALDERMEN MAY:

Have powers of fence viewers in towns—Town Law, § [illegible]

Solemnize marriage—Domestic Relations Law, § [illegible]

Receive from five to ten copies of election lists—Election Law, § [illegible]

Not be interested in contracts—General City Law, § 3.

Consent to binding apprentices—Domestic Relations Law, § 73.

Command mobs to disperse—Code of Criminal Proc., § 106.

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§ 31. **Resignations to be made to common council**—Resignation by any officer authorized to be chosen or appointed by this act shall be made to the common council of the city, subject to their approval and acceptance. (*L.* 1888, *Ch.* 140.

§ 35. **Vote of aldermen; presence of mayor at meetings**—In all proceedings of the common council each member present shall have a vote. The mayor shall be entitled to be present at all meetings of the common council, but shall have no vote. (*L.* 1880, *Ch.* [illegible]

§ 36. **Common council meetings; when public; minutes and rules**—The sitting of the common council shall be public, except when the public interest shall, in its opinion, require secrecy. The minutes of the proceedings shall be kept by the clerk, and the same shall be open at all time to public inspection. The said board shall prescribe, from time to time, such rules to govern the proceedings as it shall deem advisable. (*L.* [illegible] *Ch.* [illegible]

§ 30. **Ineligibility of aldermen to hold office; city officers not to be interested in contracts.** No member of the common council shall, during the period for which he was elected, be capable of holding, under the appointment or election of the common council, any office the emoluments of which are paid from the city treasury or paid by fees or compensation directed to be paid by any act or ordinance of the common council, nor shall the mayor or any alderman, or school commissioner, or member of the executive board, or of the board of health, be directly or indirectly interested, as principal, surety or otherwise, in any contract, the expense or consideration whereof is to be paid under any act or ordinance of the common council, or out of the city treasury; but this shall not affect the right to any fees or emoluments belonging to any office. (Z., 1888, ch. 141.)

City officers shall not be interested in public contracts. General City Law, § 3; Willcox Charter, § 13, this book, post.

Contracts in which municipal officers are interested are void as against public policy. Dillon's Municipal Corporations, § 454.

Illegal contracts cannot be enforced. Pomeroy on Contracts, § 251; Clark on Contracts, 6th Am. Edn., p. 721; Pomeroy on Contracts, p. 252; Bell vs. Leggett, 7 N. Y. 176; Bridgeport City Bank vs. Dimon, 14 N. Y. 191; Dewitt vs. Brisbane, 16 N. Y. 412; Pomeroy on Contracts, p. 253; Clark on Contracts, 6th Am. Edn., p. 721.

Misdemeanor for public officer to be interested in public contracts. Penal Code, § 177.

§ 31. **General powers and duties of common council.** The common council shall have the management and control of the fiscal and prudential affairs of said city, and of all property, real and personal, belonging to the city, and may make such orders and by-laws relating to the same as it shall deem proper and necessary; and further, it shall have power

to make, modify and repeal such ordinances, by-laws and regulations as it may deem desirable within the said city for the following purposes:

1. PUBLIC PEACE AND MORALITY.—To prevent vice and immorality; to preserve public peace and good order; to prevent and quell riots, disturbances and disorderly assemblages. (*L.* 1885, *Ch.* 14).

2. DISORDERLY HOUSES, GAMBLING, ETC.—To suppress disorderly, gaming and bawdy houses, instruments and devices used for gaming, billiard tables and bowling alleys, and punish gaming. (*L.* 1880, *Ch.* 14).

3. INTOXICATING LIQUORS—To forbid and prevent the vending or other disposition of liquors and intoxicating drinks to be drank in any canal boat, store or other place not duly licensed; and to forbid the selling, or giving to be drank, any intoxicating liquors to any child or young person, without the consent of his or her parents or guardian. (*L.* 1880, *Ch.* 14).

4. SPORTS, EXHIBITIONS, ETC.—To license and regulate, or prohibit sports and the exhibition of shows of every kind, including circuses, theatrical exhibitions or representations, exhibition of natural or artificial curiosities, caravans of animals, and all other public performances and public exhibitions for money, and to prescribe the terms and conditions upon which licenses shall be granted, and to prohibit all unlicensed persons from taking part in, or conducting, managing or controlling the same. The license fee to be imposed shall be in the discretion of said common council, but shall not be at a rate exceeding seventy-five dollars for a single performance, or five hundred dollars per year, and at that rate for quarterly periods for the year. (*As amended L.* 1890, *Ch.* 561).

5. Slaughter-houses, stables, etc.— To direct the location of all slaughter-houses, tallow chandler shops, soap factories, tanneries, stables, privies, hog-pens, sewers, or other offensive or unwholesome houses or places, and the location, size and kind of all receptacles for the keeping of manure of every kind, abate or remove nuisances of every kind, and to compel the owner or occupant of any of the houses, building or places aforesaid to cleanse, remove or abate the same whenever it deems necessary for the health, comfort or convenience of the inhabitants of said city. (*As amended L.* 1894, *Ch.* 561).

6. Gunpowder, fire-works, etc.— To direct the location of all buildings for storing gunpowder or other combustible substances, and to regulate the sale and use of gunpowder, fire-crackers, or fire-works, manufactured or prepared therefrom, or other combustible materials, the exhibition of fire-works, the discharge of fire-arms, the use of candles and lights in barns, stables and other buildings, and to restrain the making of bonfires in streets and yards. (*L.* 1888, *Ch.* 141).

7. Cumbering of streets; opening of street surfaces; injury to property; numbering on streets; distribution of handbills, etc.; wires, poles, and subways— To regulate and prevent the use and encumbering of streets, avenues, walks, public squares, lanes, alleys, bridges, aqueducts, wharves, basins or slips in any manner whatever; to regulate the opening of street surfaces and connections with sewers, and the laying of gas, water-pipes and mains and sewer connections, to regulate and control the erection, construction, laying, stringing, maintaining, and removing of all wires, cables, poles, conduits and subways, upon, over and under the streets, avenues, lanes, squares, parks, bridges, aqueducts and public places, within said city, to prevent injury to public and private property

and premises within said city, and to cause all buildings, dwellings and business places to be numbered or renumbered on any and all streets, squares, avenues, parks, places, courts and alleys in said city, at the cost and expense of the owner thereof; to regulate the exhibition and distribution of advertisements or handbills within said city. (*As amended L.* 1894, *Ch.* 28).

8. HORSE-RACING, DRIVING, ETC.—To prevent and punish horse-racing, and to regulate driving and riding in any street, avenue, lane, alley or public square, park, place or upon any of the bridges within said city and to authorize the stopping and detaining of any person who shall be guilty of such racing or immoderate driving or riding aforesaid. (*As amended L.* 1894, *Ch.* 561).

9. RAILROADS, ETC.—To determine and designate the route and grades of any railroad to be laid in said city, and to restrain and regulate the rate of speed of locomotives, engines and cars upon the railroads within the said city. (*L.* 1880, *Ch.* 14).

10. BATHING—To regulate or prohibit bathing in any public water. (*L.* 1880, *Ch.* 14).

11. DRUNKARDS, BEGGARS, ETC.—To restrain and punish drunkards, vagrants, mendicants, street beggars, and persons soliciting alms or subscriptions for any purpose whatever. (*L.* 1880, *Ch.* 14).

12. POUNDS—To establish and regulate pounds, and restrain and regulate the running at large of horses, cattle, swine, and other animals, geese and other poultry, and to authorize the impounding and sale of the same for the penalty incurred, and the cost of keeping and impounding the same. (*L.* 1880, *Ch.* 14).

13. DOGS—To regulate and prevent the running at large of dogs, and to prevent dog fights in the streets, to require dogs to be

licensed, to seize, impound, sell or destroy such as are found unlicensed upon the public streets or places of said city. (*As amended L.* 1897. *Ch.* 784).

Act as to dogs in cities of second class. L. 1902, Ch. 294, printed in full this book, post. See Index.

14. Dead carcasses, putrid meats, etc.—To prohibit any person from bringing or depositing, within the limits of said city, any dead carcass or any other unwholesome or offensive substances, or to require the removal or destruction of such substances, or any putrid meats, fish, hides or skins of any kind, by any person who shall have the same on his premises, and on his default to authorize the removal or destruction thereof by some officer of the city. (*L.* 1885, *Ch.* 143).

15. Sidewalks and fences. To compel all persons to keep sidewalks in front of premises owned or occupied by them clear from ice, snow, dirt, wood and obstructions, and to prohibit and prevent the erection or placing of or suffering to remain any barbed-wire or any other fence that is likely to cause injury to animals or persons or their clothing within the city of Rochester, situate, built or constructed upon any line of, or adjacent to any street, avenue, alley, lane, square or place therein, and also to regulate and provide the manner of constructing and maintaining division or line fences within said city, and the mode and kind thereof, and to apportion the construction and maintenance of such fences by and between owners of the lands forming such division or boundary lines. (*As amended L.* 1895, *Ch.* 561).

16. Auctioneers, delivering goods, etc.—To license and regulate, and control auctioneers and the sale of goods, property and other commodities at auction within said city and to determine the times and manner

of making such sales, and to prescribe the terms and conditions upon which licenses shall be granted; to prohibit all unlicensed persons from acting or taking part in or managing any such auction, and to exact a license fee in such an amount as said common council may deem reasonable, not exceeding, however, one hundred and fifty dollars per year. To regulate and prohibit the ringing of bells and the crying of goods and other commodities for sale at auction, or otherwise, and to prevent disturbing noises in the streets or places in said city. (*As amended L.* 1890, *Ch.* 561).

See City of Rochester vs. Close, 35 Hun 268.

17. INFECTIOUS DISEASES—To require the removal, from the populous parts of the city, of all persons having infectious or pestilential diseases. (*L.* 1880, *Ch.* 161).

18. BURIAL OF DEAD—To regulate the burial of the dead, and to compel the keeping and return of bills of mortality. (*L.* 1880, *Ch.* 14).

Burial in any cemetery in city can be prevented—People ex. rel. Oak Hill Cemetery Assn. vs. Platt, 129 N. Y. 68.

19. MARKETS AND SALES—To establish, order and regulate markets; to regulate the vending of temporary sales of clothing, boots, shoes and other commodities; wood, coal and other fuel; meats, vegetables, fruits, fish, poultry, milk and provisions of all kinds; strong or spirituous liquors, wine, ale or beer, not in conflict, however, with any state law; and to prescribe the time and place for selling the same, and for ascertaining the weight or other quality thereof, and to prescribe the fees to be paid for licenses for the sale of the aforesaid articles; such license fees not to exceed fifty dollars from any person so licensed except that a license fee not exceeding thirty dollars for a wagon drawn by two horses, and not

exceeding twenty-five dollars for a wagon drawn by one horse, may be exacted; and to prevent the sale or exposure for sale of unwholesome, diseased, impure or adulterated meats, vegetables, fruit, fish, poultry, milk, food and provisions of all kinds; and the board of health may appoint from time to time, and at pleasure remove, a competent person, and fix his salary, to be paid out of the health fund, whose duty it shall be to test and inspect all meats, vegetables, fruit, poultry, milk, food and provisions of all kinds sold, or offered for sale, whenever the sale thereof is regulated by ordinance, for the purpose of preventing the sale or exposure for sale of all the aforesaid unwholesome, diseased, impure or adulterated commodities, and any of such commodities not of the standard or character fixed by any statute now or hereafter passed, before being offered or exposed for sale, but provided that nothing herein contained shall authorize the common council to prevent the sale of fresh and wholesome meats by the quarter, within the limits of said city, by farmers who have raised and fattened the same upon their own farms. (*As amended L.* 1897, *Ch.* 784).

25. Public reservoirs, etc. To establish, make, regulate and preserve public reservoirs, wells and pumps, and to prevent the waste of water. (*L.* 1888, *Ch.* 440).

21. Public halls, scenows, undertakers, pawnbrokers and billposters. To license, regulate and control scavengers, chimney sweeps, expressmen, cartmen, porters, hack, cab, truck, omnibus and stage owners and drivers and the owners and drivers of all vehicles used for hire in the city of Rochester, for the transportation of passengers and merchandise, goods or articles of any kind, and to require the owners of all such carts, carriages and vehicles to mark the same in such manner as the common council

may designate, and fix the rates of compensation to be taken by them; to license and regulate sextons and undertakers for burying the dead; to license and regulate butchers, hawkers, peddlers, common criers, (* billposters), and runners for stages, railroads, taverns and other houses, junk-shop dealers, pawnbrokers and dealers in second-hand articles, and the business of pawnbrokerage; to prescribe the terms and conditions upon which any such license shall be granted, and to prohibit all unlicensed persons from acting in such capacities, and to exact a license fee aforesaid, in such an amount as the said common council shall deem reasonable, not exceeding, however, five hundred dollars per year from any pawnbroker, and not exceeding fifty dollars a year from any other of the persons above enumerated, except that a fee of not exceeding ten dollars, for each wagon, carriage or vehicle used in any of the business aforesaid, may be charged for any one year; to license and regulate billposters and bill distributors, and sign advertising and to prescribe the terms and conditions upon which any such license shall be granted and to prohibit all unlicensed persons from acting in such capacity and to exact a license fee aforesaid in such an amount as the common council shall deem reasonable not exceeding however one hundred dollars per year. (*As amended* L. 1894, *Ch.* 281).

22. OMNIBUSES, STAGES, ETC. To prevent runners, stage drivers or others from soliciting persons to travel or ride in any stage, omnibus, carriage, boat, or upon any railroad, or to go to any hotel or other place of entertainment. (*L.* 1880, *Ch.* 14).

23. STREET LIGHTS—To provide for and regulate the lighting of streets and alleys, and the protection and safety of public lamps. (*L.* 1880, *Ch.* 14).

* So in session laws.

Old Charter

24. Peddlers and pawnbrokers—To regulate and restrain hawking and peddling in the streets, and to regulate pawnbrokers. (*L.* 1880, *Ch.* 14).

25. Duties, compensation, bonds, etc. of officers appointed by common council—To prescribe the duties of all officers appointed by the common council, and their compensation, and the penalty or penalties for failing to perform such duties, and to prescribe the bonds and sureties to be given by the officers of the city for the discharge of their duties, and the time for executing the same, in cases not otherwise provided for by law. (*L.* 1880, *Ch.* 14).

See White Charter, § 45, this book, post.

26. Shade trees—To protect and preserve shade trees in the streets, parks, squares, avenues and alleys of said city, and to cause such trees to be pruned and trimmed so that the same shall not obstruct or prevent the proper lighting of streets. (*Repealed L.* 1897, *Ch.* 784).

Power given to park board—*L.* 1901, *Ch.* 701.

27. Tires of wheels—To regulate and prescribe the breadth of tires upon the wheels of wagons, carts, and vehicles of heavy draught used upon paved, macadamized or improved streets in said city, provided, however, that this section shall not apply to vehicles used by farmers coming into the city with produce or fuel. (*L.* 1880, *Ch.* 14).

28. Sealing of weights and measures—To require every merchant, retailer, trader and dealer in merchandise or property of any description, which is sold by measure or weight, to cause their weights and measures to be sealed by the city sealer, and to be subject to his inspection, and may impose penalties for any violation of any such ordinance. (*L.* 1880, *Ch.* 14).

See White Charter, § 41, this book, post.

29. HARBORS, CANALS, WHARVES, ETC.—To pass such ordinances as they may think proper and necessary to prevent the harbors, canals, basins and slips in the city from overflowing, and to compel the repair or raising up of the banks, wharves and landing along such harbors, canals, basins and slips, and to prevent the casting therein of any earth or other substances, and to prevent and remove all obstructions therein, and prescribe penalties for the violation of any such ordinance. (*L.* 1880, *Ch.* 140.

30. LICENSES BY MAYOR—The common council may empower the mayor, or other officer of the city, to issue any license authorized by this act, and said mayor shall prescribe the person to whom the same may be issued, and the amonnt to be paid for such license, but within the limit fixed in the ordinance or resolution authorizing the same. (*As amended L.* 1890, *Ch.* 561).

31. STATIONARY ENGINEERS, EXAMINATION AND LICENSE—To regulate, classify and license all persons operating or using any steam boiler to generate steam, except for railroad locomotive engines, and for heating purposes in private dwellings. To appoint, from time to time a committee of competent persons to examine all applicants for such licenses, and to issue the same to the applicant in the grade or class in which he is found qualified, upon such examination to enter. To prescribe the amounts of the license fees to be exacted, which, in no case, shall exceed the sum of twenty dollars, but no certificate or license shall be issued until the license fee fixed therefor shall first have been paid to the treasurer of said city. Such certificate or license may be revoked or suspended at any time by the common council by a vote of a majority of the members present at the meeting and voting, upon the report of any two practical engineers detailed by the common council for that pur-

pose, stating the grounds upon which such certificate or license should be revoked or suspended. Where such certificate or license shall have been revoked, as aforesaid, a like certificate or license shall not, in any case, be issued to the same person within six months from the date of the revocation of the former certificate or license held by such person. The city clerk shall keep a book of registration, open for inspection at his office, in which shall be registered the name and address of each and every person qualified and licensed as aforesaid. [As amended L. 1890, ch. 361.]

§ 41. **Common council to cover mill-races; assessments**—The common council shall have power by ordinance, to cause any mill-race within said city to be covered with bridges or arches or otherwise, in the same manner that other public improvements are directed to be made and pursuant to the provisions of title seven of this act so far as the same are applicable. The expense of such improvement may be assessed wholly upon the owners or occupants of such mill-race, or upon such other property as the common council shall deem benefited, or both, in the same manner as other assessments for local improvements. [L. 1858, ch. 143].

Expense of covering race [illegible]

[illegible] City of Rochester, 14 N. Y. [illegible]

[illegible] Also Index to all the Acts of Incorporation, Appendix.

§ 42. **Common council may direct gaslight companies to lay mains, etc.; assessments**—The common council shall have power by ordinance or otherwise to require any gaslight company in said city to lay its mains or gas pipes in any of the public parks, streets, lanes or alleys within the limits of said city, upon making proper and just compensation therefor, and said company is hereby required upon such compensation being made to so extend said mains in pursuance of any

ordinance duly passed by said common council, and the said common council may, in its discretion, assess the expenses of said extension upon the property benefited thereby, wholly or partly on said city at large, or both. (*L.* 1880, *Ch.* 14).

§ 50. **Duties of aldermen**—It shall be the duty of every alderman in said city to attend the regular and special meetings of the common council; to act upon committees when thereunto appointed by the common council; to order the arrest of all persons violating the laws of the state, or the ordinances, by-laws or police regulations of the city; to report to the mayor all subordinate officers who are guilty of any official misconduct or neglect of duty, and to aid in maintaining peace and good order. (*L.* 1880, *Ch.* 14).

§ 169. **Buildings worth $50,000 not to be condemned**—The common council shall not lay out any street, alley, square, park or walk, or alter any such as may already be laid out or used, so as to run across or over the site of any building, at the time actually erected, which shall be of the value of fifty thousand dollars, without having obtained the consent of the owner of such building in writing, or without having purchased such building. This section shall take effect on the first day of January, eighteen hundred and eighty-two. (*As amended L.* 1881, *Ch.* 343).

See Elwood vs. City of Rochester, 43 Hun 117, affirmed, 123 N. Y. 625.

§ 220. **Power of common council to regulate construction of buildings; removal and inspection of same**—The common council shall have power to enact ordinances governing the construction, regulation and inspection of all buildings within said city, the size, parts and materials thereof, the thickness of the walls and the materials to be used in the construction of such walls or in any part of said buildings, and may inspect or

cause to be inspected any building erected or in process of erection, *see that the same correspond to said ordinances. Said common council or person designated by it shall have authority at all reasonable hours to enter upon premises to make such inspection and may arrest and put a stop to the erection or removal of any building in process of erection or removal which shall not conform to said ordinances until the same shall be conformed thereto, and every building erected, removed or placed contrary to such ordinances is hereby declared to be a common nuisance and may be abated and removed as such by the common council, and for this purpose may employ the police of said city. For the purpose of guarding against calamity of fire the common council may designate by ordinance such portions of said city as they shall think proper within which no building of wood or combustible material shall be erected and may require iron or other shutters to be placed upon the outer doors and windows of buildings already constructed or which hereafter may be constructed and every violation of any ordinance authorized by this section shall be punishable by a fine of not more than two hundred and fifty dollars or by imprisonment in the Monroe county penitentiary for a period not exceeding one hundred and fifty days, or by both such fine and imprisonment. (*As amended L. 1897, Ch. 784*).

Factory inspector shall inspect scaffolding, etc.— Labor Law, § 12.

§ 221. **Power of common council to require scuttles, ladders, etc.** The common council may, by ordinance, require the owners and occupants of houses and buildings to have scuttles on the roofs of such houses and buildings, and stairs or ladders leading to same; and whenever the owner or occupant of any house or building shall not comply with

*So in session laws. [illegible]

such ordinance, or with any ordinance in relation to iron shutters upon the windows and doors of any building, the common council may, at the expiration of twenty days after personal service of a notice of such ordinance upon the owner or occupant, cause such scuttles, stairs, ladders or shutters to be constructed and placed in or upon said building, and may recover the expense thereof, with ten per cent in addition, of the owner or occupant whose duty it was to comply with such ordinance. (*L.* 1880, *Ch.* 14).

§ 222. **Power of common council to build and protect fire-escapes; to prevent fires**—The common council may prevent or regulate the carrying on of manufactories calculated to cause or promote fires and may require the owners or occupants of all buildings wherein manufactories are conducted, and all buildings now erected, or that may hereafter be erected, more than three stories in height, occupied by, or built to be occupied by three or more families above the first story, and every building already erected, or that may hereafter be erected, more than three stories in height, occupied or used as a hotel, lodging-house or boarding-house, having more than fifteen rooms, and every factory, mill, office building, manufactory or work-shop, hospital, asylum or institution for the care or treatment of individuals, and every building, in whole or in part, occupied or used as a school or place of instruction or assembly, to construct thereon good and suitable fire-escapes, and other means of egress, in case of fire, and may empower the fire-marshal of said city to superintend the construction of all such fire-escapes or other means of egress, and may authorize said fire-marshal to specify the means of egress to be provided in all cases where he or the common council shall deem the same necessary. The owner or owners of any such buildings, upon which any fire-escapes

may now be, or may hereafter be, placed or erected shall keep the same in good repair and well painted, and no person shall, at any time, place any incumbrance of any kind whatsoever before or upon any such fire-escapes. It shall be the duty of every fireman, policeman, fire-marshal, alderman and mayor, who shall discover any fire-escape, balcony or ladder of any fire-escape incumbered in any way, to forthwith verbally notify and require the occupant of the premises or apartments, to which said fire-escape, balcony or ladder is attached, or for whose use the same is provided, to remove such incumbrance and keep the same clear. The common council may enact any ordinance relative to any of the matters herein specified, and provide that for a violation thereof, or of any of its provisions, the person so offending shall be liable to a penalty of not exceeding two hundred and fifty dollars, and in the case of the non-payment the offender to be subject to imprisonment in the Monroe county penitentiary for a period not exceeding one hundred and fifty days; the amount of the fine and duration of imprisonment to be in the discretion of the court, judge or justice before whom the action for the penalty shall be brought, but within the above specified amount and period, and the amount and period specified in such ordinance. The common council may also require the construction of safe deposits for ashes, the removal of any hearth, fire-place, stove, grate or other apparatus in which fire may be used, or any chimney, flue, or other conductor of smoke that may be considered likely to cause or promote fire, and may compel the cleaning of chimneys, flues, and all other conductors of smoke, and upon the neglect of any owner or occupant of any building to clean the chimneys, flues, or other conductors of smoke therein, or to construct such deposits, or to make the removals, as hereinbefore mentioned, he shall forfeit the sum of one hundred dollars. The common

council may cause such removals to be made, and such chimneys, flues, or other conductors of smoke to be cleaned, or such fire-escapes or modes of egress to be constructed, and may collect the expense thereof, and ten per centum in addition, from the owner or occupant whose duty it was to have the same removed, cleansed, cleaned or constructed. The common council may adopt such other regulations for the prevention and suppression of fires as it may deem necessary. An execution, issued upon any judgment recovered by virtue of the provisions of this title, except as hereinbefore provided, may issue against the property or person of the defendant herein, or both. (*Amended L.* 1882, *Ch.* 120; *L.* 1890, *Ch.* 561).

§ 223. **Power of common council to cause inspection of buildings, etc.**—For the purpose of enforcing any regulation or ordinance under any of the provisions of this act, the common council may authorize any of the officers of said city, or any person appointed by it, at all reasonable times, to enter into and examine all dwelling-houses, buildings, tenements and factories of every description, and all lots, yards or inclosures, and to cause such as are dangerous, to be put in safe condition, and may authorize such officers and persons to inspect all hearths, fire-places, stoves, pipes, flues, chimneys or other conductors of smoke, or any apparatus or device in which fire may be used, or to which fire may be applied, and any fire-escape or modes of egress, and remove and make the same safe, at the expense of the owners or occupants of the buildings in which, or to which, the same may be, and to ascertain the situation of any building in respect to its exposure to fire, and whether iron shutters, scuttles, ladders and fire-escapes thereto, and proper and safe modes of egress therefrom, in cases of fire, have been provided, and, generally, with such other powers and duties as the

common council shall deem necessary to guard the city from the calamities of fire. (*As amended L.* 1890, *Ch.* 561).

Note—The common council by resolution, April 11, 1899, designated the fire marshal as the officer to enforce the provisions of § 223, *ante*. See notes under § 233, White Charter, this book, *post*.

§ 231. **Common council may compensate firemen for injuries**—The common council may provide suitable compensation for any injury that any fireman may receive, either in his person or property, in consequence of his exertions at any fire. (*L.* 1880, *Ch.* 14).

§ 261. **Application by common council of penalties recovered**—The common council may direct any moneys that may have been recovered for penalties or forfeiture, to be applied to the payment of any extra expenses that may have been incurred in apprehending offenders, or in subpœnaing or defraying the expenses of witnesses in any suit for such penalties or forfeiture, or in conducting such suits. (*L.* 1880, *Ch.* 14).

§ 287. **Removal from ward vacates office of alderman**—Whenever any alderman in said city shall cease to reside in the ward in and for which he was elected, his office shall be vacant, and his powers as such alderman shall terminate. (*L.* 1880, *Ch.* 14).

ARTICLE III

EXECUTIVE DEPARTMENT

§ 42. **Executive power vested in mayor and executive officers**—There shall be elected at the first election under this act, and at the city election every two years thereafter, a mayor. The executive power of the city is vested in the mayor, and in such executive officers and departments as are, or may be, created by law, or by ordinances of the common council. (*L.* 1898, *Ch.* 182).

The White charter imposes the responsibility of the administration of affairs of the city upon the mayor—Pryor vs. City of Rochester, 166 N. Y. 548.

§ 43. **Salary and term of mayor; term of president of common council**—The annual salary of the mayor shall be, in a city having a population, as appears by the last state enumeration, of less than ninety thousand, twenty-five hundred dollars; in a city having a population of more than ninety thousand and less than one hundred and fifty thousand as aforesaid, four thousand dollars; in a city having a population of more than one hundred and fifty thousand as aforesaid, five thousand dollars. The mayor and president of the common council shall be elected at the city election, and shall hold their offices for the term of two years. (*L.* 1898 *Ch.* 182).

Oath of office of mayor—Public Officers Law, § 10; failure to take, Penal Code, §§ 42, 43; effect of failure—official acts, Public Officers Law, § 15.

§ 44. **President of council to act as mayor in case of vacancy**—In case of the absence or inability of the mayor, or during a vacancy in the office, the president of the common council shall act

as mayor until the mayor returns, his inability ceases or the vacancy is filled. But it shall not be lawful for the president of the common council, when acting as mayor, to sign or approve any ordinance of the common council, or to appoint to, or remove from office any person unless the vacancy in the office, or the inability or absence of the mayor shall have continued for at least thirty days. (*L.* 1898, *Ch.* 182).

Vacancies generally—Public Officers Law, § [illegible].

Mayor may preside over common council in absence of president—White Charter, § 14, this book, *ante*.

§ 45. **Mayor shall advise with heads of departments**. The mayor shall call together the heads of the city departments for consultation and advice upon the affairs of the city as often as he may deem advisable, but not less than twelve times in each year; and at such meetings he may call upon the heads of the departments for such reports as to the subject matters under their control and management as he may deem proper, which it shall be their duty to prepare and submit at once to him. Records shall be kept of such meetings, and rules and regulations shall be adopted thereat for the harmonious, systematic and efficient administration of the affairs of the city not inconsistent with the laws of the state or with the city ordinances. (*L.* 1898, *Ch.* 182).

§ 46. **General duties of mayor**. It shall be the duty of the mayor to see to the faithful performance of their duties by the city officers and departments, to maintain peace and good order within the city, to take care that the laws of the state and the ordinances of the common council be executed and enforced within the city; to communicate by written message to the common council at least once a year a statement of the finances and general condition of the affairs of the city, and with such recommendations in relation thereto as he may deem proper, and to give such information in relation to the same as the common council may from time to time require; and also to call

a special meeting of the common council, whenever in his judgment it is required by public necessity. It shall also be his duty to receive and examine into all complaints made against any city officer for neglect of duty, or malfeasance in office. (*L.* 1898, *Ch.* 182).

General powers and duties of mayor — See note after § 51, White Charter, this book, *post.*

§ 47. **Mayor shall sign deeds and contracts; city seal**— The mayor shall, on behalf of the city, sign all deeds and contracts made by it, and shall cause to be affixed thereto the city seal, of which he shall have the custody. (*L.* 1898, *Ch.* 182).

Mayor may be compelled by mandamus to sign contract duly made by common council—People ex rel. Lighton vs. McGuire, 31 Misc. 324 (1900).

§ 48. **Mayor may investigate departments**—The mayor shall have authority at all times to examine the books and papers of any officer, employee or department of the city, and as often as he may deem proper, to appoint one or more competent persons to examine, without notice, the accounts of any city officer or department, and the money, securities and property belonging to the city in the possession or charge of any officer or department, and to report the result of such examination; and he may administer oaths to witnesses and take affidavits in all cases relating to the affairs of the city. (*L.* 1898, *Ch.* 182).

§ 49. **Mayor shall appoint city officers** — Except as otherwise provided in this act, the mayor shall appoint all the city officers, and except as otherwise provided in this act or in the other laws of the state, he may remove at pleasure any city officer appointed by him. (*L.* 1898, *Ch.* 182).

The duration of term of office is at the pleasure of the appointing power if not declared by law—State Constitution, Art. X, § 3.

§ 50. **Mayor's powers to remain as prescribed by law**— The mayor shall have such other powers and perform such other

duties as may be prescribed in this act or by other laws of the state, or by ordinances of the common council not inconsistent with the laws of the state. (*L.* 1898, *Ch.* 182).

§ 51. **Mayor shall appoint his assistants.** The mayor shall appoint an executive clerk and such other assistants in the routine work of his office as the common council may by ordinance prescribe. (*L.* 1898, *Ch.* 182).

NOTE. §§ 52-60, inclusive, omitted in White Charter as first enacted.

IN ADDITION TO THE PROVISIONS OF THE CHARTER, OTHER LAWS PROVIDE AS TO THE MAYOR AS FOLLOWS:

Shall be elected by the electors of the city—State Constitution, Art. X, § 2.

May solemnize marriage—Domestic Relations Law, § 11, as amended L. 1902, Ch. 522.

Shall appoint commissioners of deeds—Executive Law, § 86, and White Charter, § 49.

Shall appoint civil service commissioners and approve their rules—Civil Service Law, § 10.

Shall make annual report to secretary of state as to city's financial condition—L. 1903, Ch. 347, published in full this book, *post*. See Index.

May offer rewards for apprehension of criminals—L. 1902, Ch. 549, published in full this book, *post*. See Index.

May issue permits for the employment of children in theaters, etc.—Penal Code, § 292, as amended L. 1884, Ch. 40; L. 1886, Ch. 31, and L. 1892, Ch. 300. § 292, *supra*, applies to all public shows. People vs. Ewer, 141 N. Y. 129.

Shall appoint election officers—Election Law, § 12.

Shall not appoint to office members of legislature—State Constitution, Art. III, § 7; city officers not eligible to legislature, *id.*, § 8.

Shall act when city laws are received from legislature—General City Law, L. 1906, Ch. 327; § 31 amended L. 1912, Ch. 353.

May appoint commission to purchase works of art to spend $10,000 per year—General City Law, § 121.

Shall designate scales for the weighing of coal—General City Law, § 137. Provisions of the General City Law as to the protection of buyers of coal in cities, published in full, this book, *post*. See Index.

May consent to $500 being raised annually to meet expenses of Memorial Day—L. 1897, Ch. 424. Published in full, this book, *post*. See Index.

Powers of the Mayor—Continued

May call out the National Guard in case of breach of the peace—Military Code, §§ 9, 86, 152.

Must command mobs to disperse—Code Crim. Proc., § 106.

Must order sufficient police at public meetings—Code Crim. Proc., § 101.

Shall appoint members of examining board of plumbers—General City Law, § 40.

Is entitled to receive from secretary of state bound volumes of session laws—Legislative Law, § 46; as amended, L. 1902, Ch. 293.

May endorse application for appointment of commissioners to build steam railways—Railroad Law, § 120.

Shall appoint police matrons—General City Law, §§ 90 and 91.

Shall not appoint as special police any persons not citizens—Penal Code, § 119; as amended L. 1882, Ch. 384, and L. 1892, Ch. 272.

Shall appoint trustees of free libraries—University Law, L. 1892, Ch. 378, § 39.

Is declared a magistrate—Code Crim. Proc., § 147; as amended, L. 1892, Ch. 279.

Shall not be interested in city contracts—General City Law, § 3.

May administer oaths required by law—Code Civil Proc., § 842; Public Officers Law, § 10; Real Property Law, §§ 248 and 249.

Shall endorse application for admission into N. Y. state institution for the blind—L. 1867, Ch. 744; as amended, L. 1872, Ch. 616.

May commit children to incorporated orphan asylum—L. 1884, Ch. 438.

May consent to binding of apprentices—Domestic Relations Law, § 73.

In absence of surrogate could receive petition to discover concealed property—Code of Civil Proc., § 2708; as amended L. 1893, Ch. 686, and L. 1895, Ch. 946; amended and repealed as to mayor, L. 1903, Ch. 526, in effect Sept. 1st, 1903.

Powers as to disorderly persons—Code Crim. Proc., § 900.

May receive applications in summary proceedings to remove persons from real property—Code Civil Proc., § 2234; as amended, L. 1881, Ch. 122; L. 1884, Ch. 405, and L. 1895, Ch. 946. Code Civil Proc., § 2250; as amended, L. 1882, Ch. 399.

Powers and duties as to grade crossings of steam railroads—Railroad Law, §§ 60–69.

As to street surface railroads—Railroad Law, §§ 91 and 120.

May grant licences for sales of bankrupt stock, goods damaged by fire, etc.—L. 1898, Ch. 141.

Powers of the Mayor—Concluded

May grant license to carry firearms—L. 1883, Ch. 375. See Penal Code, § 410.

Shall issue to policemen and firemen certificates good for free use of street railway, telegraph and telephone, when on duty—L. 1895, Ch. 417.

May hear applications in case of contested elections—Legislative Law, § 64.

May make proclamation permiting foreign flags to be displayed on public buildings—L. 1895, Ch. 36.

Shall receive reports twice annually as to inspection of hotels in regard to fire escapes—Domestic Commerce Law, § 40.

Old Charter

§ 30. **Mayor and city clerk to report officers' neglect to give bonds**—The mayor shall report to the common council the names of such officers, except constables, as shall have neglected to give the bond of security required by law. The city clerk shall likewise report to the common council the names of such constables as shall have neglected to give or file the bond or security required by law. (*As amended L.* 1881, *Ch.* 343).

§ 47. **Powers and duties of mayor**—It shall be the duty of the mayor to take care that the laws of the state and the ordinances of the common council be faithfully executed; to exercise a constant supervision and control over the conduct of all subordinate officers, and to receive and to examine into all complaints against them for neglect of duty; to recommend to the common council such measures as he shall deem expedient, and, in general, to maintain the peace and good order and advance the prosperity of the city. In all criminal matters he shall have and possess the same power as a county judge at chambers, and shall have

power to administer oaths and take affidavits within said city, and to receive therefor the same fees that are allowed to county judges for the same services. (*L.* 1880, *Ch.* 14).

§ 49. **Official bonds to be filed with mayor**—All official bonds of said city, except as may be otherwise provided by law, shall be deposited with the mayor of the city for safe keeping, and it shall be his duty to deliver the same to his successor in office. (*L.* 1880, *Ch.* 14).

§ 281. **Power of mayor to examine sureties on bonds; bonds to be recorded in county clerk's office**—The common council, or the mayor, or other officer whose duty it shall be to judge of the sufficiency of the proposed sureties of any officer or person of whom a bond or instrument in writing may be required under the provisions of this act, shall examine into and be satisfied of the sufficiency of such sureties, and may require them to submit to an examination under oath as to their property. Such oath may be administered by the mayor or any alderman of said city. The deposition of the surety shall be reduced to writing, be signed by him, certified by the person taking the same, and annexed to and filed with the bond or instrument in writing to which it relates. Any and all contracts, agreements, bonds or undertakings, made with, or given to, said city, at any time heretofore, or hereafter, shall, when duly acknowledged, be recorded by the Monroe county clerk in his office, and a copy thereof so recorded, certified by said county clerk, shall be as good evidence in all courts and places as the original contract, agreement, bond or undertaking, which shall be safely kept by the mayor, clerk, or other officer of said city having lawful custody thereof, after being recorded, as aforesaid. (*As amended L.* 1892, *Ch.* 196).

§ 282. **Power of mayor, common council or committees to administer oaths and issue subpœnas**—The mayor, president of the common council, or the chairman of any committee or special committee of, or appointed by, the common council, shall have power to administer any oath or take any affidavit in respect to any matter pending before said mayor, common council or such committee. The mayor or chairman or a majority of any such committee, may issue subpœnas for the attendance of witnesses and production of books and papers before him or them, as a chairman or a majority of a committee is authorized to do by section eight hundred and fifty-four of the code of civil procedure; the provisions of sections eight hundred and fifty-two, eight hundred and fifty three, eight hundred and fifty-five to eight hundred and fifty-eight, inclusive, and eight hundred and sixty to eight hundred and sixty four, inclusive of said code, so far as they can be made applicable, shall apply to the issue and service of subpœnas, the attendance, disobedience, punishment, exemption and discharge of witnesses subpœnaed under this section. (*As amended L.* 1895, *Ch.* 561).

Powers of common council investigating committees—See General City Law, §§ 5-7.

§ 283. **Perjury**—Any person who may be required to take any oath or affirmation, or make any affidavit or statement under oath or affirmation, under or by virtue of any provision of this act, who shall, under such oath or affirmation in any statement or affidavit, or otherwise, willfully swear falsely as to any material fact or matter, shall be guilty of perjury. (*L.* 1888, *Ch.* 140).

ARTICLE IV

DEPARTMENT OF FINANCE

§ 61. **Comptroller and deputies**—There shall be a comptroller, who shall be elected at the city election at the same time as the mayor, and who shall receive an annual salary of thirty-five hundred dollars. He shall hold office for two years. He may appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. In case of vacancy in the office of comptroller the mayor shall, within ten days, fill the vacancy by appointment for the remainder of the term. (*L.* 1898, *Ch.* 182).

Oath of office—Public Officers Law, § 10. Powers of deputies—*Id.*, § 9. Failure to take oath—Penal Code, §§ 42, 43. Effect on official acts of failure to take oath—Public Officers Law, § 15.

§ 62. **Bonds of comptroller and deputies**—The comptroller and deputy comptroller, before entering upon the duties of their respective offices, shall each give a bond to the city in such penal sum as may be prescribed by the common council, with two or more sureties, to be approved by the mayor, conditioned for the faithful discharge of their duties, which bonds, when so approved, shall be filed in the office of the county clerk of the county in which the city is located, where they shall be recorded as required in the case of bonds of town collectors. (*L.* 1898, *Ch.* 182).

Official bonds generally—Public Officers Law, §§ 11–13. Acting without filing bond—Penal Code, §§ 42, 43; and Public Officers Law, § 15. Guarantors and Sureties, L. 1881, Ch. 486; L. 1893, Ch. 720, as amended L. 1895, Ch. 178.

§ 63. **Office hours of comptroller**—The office of comptroller shall be kept at a place to be designated by ordinance of the common council, and shall be kept open for the transaction of business each day in the year, Sundays and legal holidays excepted, from nine o'clock in the forenoon until three o'clock in the afternoon, and at such other hours as the common council may from time to time direct. (*L.* 1898, *Ch.* 182).

§ 64. **Duties of comptroller**—The comptroller shall superintend the fiscal concerns of the city and manage the same pursuant to law and the ordinances of the common council. He shall keep a separate account with every department for which funds are specially raised by tax; or for which funds are raised by assessment for local or other improvements. He shall require all drafts for the payment of any claims against the city to state particularly against which of such funds the drafts are drawn, and shall not permit any of such specific funds to be overdrawn, nor permit moneys to be drawn from one fund to pay the claims chargeable to another. (*L.* 1898, *Ch.* 182).

§ 65. **Audit of claims against the city and appeals from audit**—The comptroller shall prescribe the form of all claims to be presented against the city, and the form and substance of the affidavit to be appended thereto and sworn to by the claimant. Whenever any person intends to present for payment a claim against the city, he shall prepare and verify it, and then procure the approval as to the form thereof, in writing, of the department or officer whose action gave rise or origin to the claim, and the same shall then be presented to the comptroller for his examination and audit; but this shall not be required as to a claim for a fixed salary, for the principal or interest on a bonded or funded debt, or for the regular or stated compensation of the clerks, teachers, police officers, firemen, or appointees in any of the departments, or for work performed or materials furnished under contract with the board of contract and supply, or as to

claims or bills audited and allowed by the department of public instruction. The comptroller shall, once in every two weeks, cause all claims which have been presented to him for audit to be printed and numbered, and copies thereof to be distributed to the mayor, to each member of the common council, to the head of each department, and to every taxpayer entitled thereto under section four hundred and seventy-two of this act. He shall take no action upon any claim until five days after such distribution, and when he shall have taken action thereon he shall cause copies of all claims and his action upon them, with any reason for such action which he may have to give, to be sent to each, the claimant and the common council. If the claimant be dissatisfied with the audit, he may appeal to the board of estimate and apportionment, by serving notice of appeal, in writing, upon the comptroller within five days after he receives the comptroller's audit. If the common council, or the mayor, or the city treasurer, or the corporation counsel, or any taxpayer, be dissatisfied with such audit, it or he may appeal to the same board, on behalf of the city, in like manner, by serving notice of appeal upon the claimant and the comptroller and the treasurer, within ten days after the meeting of the common council at which such claims shall have been reported by the comptroller. The board of estimate and apportionment shall make rules for the procedure upon the hearing of such appeals, and the decision and audit of that board, after hearing upon the appeal to it, shall be final and conclusive as to the amount of the claim; but if there be no appeal from the original audit, it shall in like manner be final and conclusive. Upon the appeal herein provided for, the treasurer shall take the place of the comptroller as a member of the board. The comptroller, and the board of estimate and apportionment, upon appeal to it as herein provided, shall have authority to take evidence and examine witnesses in reference to the claim, and for that purpose may issue subpœnas for the attendance of witnesses; and the comptroller and each mem-

ber of the board of estimate and apportionment is hereby declared to be *ex officio* a commissioner of deeds. When a claim has been finally audited, it, with the certificate of the comptroller, or, in case of appeal, with the certificate of the board of estimate and apportionment endorsed thereon, shall be filed in the office of the treasurer, and remain a record therein. All claims and bills which are audited by any board or department which has power to audit bills, and all warrants and drafts drawn in payment of any claims or bills against the city must be presented to the comptroller to be countersigned by him before they are paid from the city treasury; and the treasurer shall not pay any such claims, bills, warrants or drafts unless they are countersigned by the comptroller. A list of all bonds issued by the city shall be kept in the comptroller's office, where it shall be open to the inspection of any citizen; and when any bonds are paid by the treasurer, they shall be presented by him to the comptroller for cancellation. (*As amended L.* 1903, *Ch.* 529).

False audit and paying of claims a felony—Penal Code, §§ 165, 166.

When costs not allowed—Code Civil Proc., § 3245.

Claims for damages to person or property—§ 361 White Charter, and §§ 56 and 218 Old Charter, this book, *post*. See Index.

Checks for duly certified pay-rolls must be countersigned—People ex rel. Barnett vs. Johnston, 38 Misc. 645; affirmed, without opinion, 75 App. Div. 636.

§ 66. **Payment of claims.** Any person presenting for payment a claim against the city, or any board thereof, shall use his own name, or the name of the firm of which he is a member. If any person shall use a name other than his own, or that of the firm of which he is a member, he shall be guilty of a misdemeanor, and any member of any board, or any officer of the city, who shall knowingly approve, audit or pay any such claim shall be guilty of a like offense. The comptroller or treasurer upon receipt of a complaint under oath and in writing, signed by any citizen, stating that he has reason to believe that any illegal claim has been presented, shall withhold pay-

ment of the claim until satisfied of its legality. No claim shall be paid until the time to appeal from the audit thereof has expired, and if an appeal has been taken within such time, until the appeal shall have been decided. (*L.* 1898, *Ch.* 182).

Presenting false claims a felony—Penal Code, § 672.

§ 67. **Comptroller to keep account with treasurer**—The comptroller shall keep an account between the city and the treasurer, and for that purpose he shall procure from the banks in which the city's funds are deposited by the treasurer, monthly statements of the moneys which have been received and paid out on account of the city, and he shall examine the treasurer's books, accounts and bank books and ascertain as to their correctness and report on the same monthly to the common council. (*L.* 1898, *Ch.* 182).

§ 68. **Comptroller to publish annual report**—The comptroller shall, on or before the first day of January in each year, publish in book form or pamphlet form, verified by his oath or affirmation, a full and accurate statement of the financial condition of the city, showing the amount of receipts and expenditures of the city since the last annual report, the sources from which the funds have been derived and for what purposes expended; such publication to be accompanied by a statement in detail, in separate columns, showing the several funds belonging to the city, the amount drawn on each fund, and its then present condition, showing also the several debts of the city, when the same are payable and the rate of interest on each, and he shall file a copy of every such statement in the office of the state comptroller. He shall perform such other and further duties pertaining to his office, not inconsistent with the provisions of this act or the other laws of the state, as may from time to time be prescribed by ordinances of the common council. (*L.* 1898, *Ch.* 182).

Chief fiscal officers shall make annual report to secretary of state as to city's financial condition—L. 1903, Ch. 347. Printed in full this book, *post.* See Index.

§ 69. **Comptroller custodian of sinking funds**—The comptroller shall have, under the direction of the board of estimate and apportionment and the ordinances of the common council, the custody and management of any sinking fund provided for the payment or redemption of city debts. (*L.* 1898, *Ch.* 182).

NOTE—§§ 70–78, inclusive, omitted in White Charter as first enacted.

§ 79. **Treasurer and deputies**—There shall be a treasurer, who shall be elected at the city election at the same time as the mayor, and who shall receive an annual salary of three thousand dollars. He shall hold office for two years. He may appoint to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. During the temporary absence or inability of the treasurer, or his suspension or removal from office, the deputy shall discharge the duties of the office. In case of a vacancy in the office of the treasurer, the mayor shall, within ten days, fill the vacancy by appointment for the remainder of the term. (*L.* 1898, *Ch.* 182).

See note as to oaths of office under § 61, White Charter this book, *ante*.

§ 80. **Bonds of treasurer and deputies**—The treasurer and deputy treasurer, before entering upon the duties of their respective offices, shall each give a bond to the city in such penal sum as may be prescribed by the common council, with two or more sureties, to be approved by the mayor, conditioned for the faithful discharge of their duties, which bonds, when so approved, shall be filed in the office of the county clerk of the county in which the city is located, where they shall be recorded, as required in the case of bonds of town collectors. (*L.* 1898, *Ch.* 182).

See note as to official bonds under § 62, White Charter, this book, *ante*.

§ 81. **Additional bonds**—Repealed. *L.* 1899, *Ch.* 581.

§ 82. **Office hours of treasurer** The office of the treasurer shall be kept at a place designated by ordinance of the common council, and shall be kept open for the transaction of business each day in the year, Sundays and legal holidays excepted, from nine o'clock in the forenoon until three o'clock in the afternoon, and at such other hours as the common council may from time to time direct. (*L.* 1898, *Ch.* 182).

§ 83. **Duties of treasurer**—The treasurer shall receive and have the care and custody of all moneys of the city and he shall pay them out as hereinafter provided. He shall also demand, collect and receive all claims and moneys due to the city from any source. All moneys of the city received by the treasurer shall be deposited by him daily in two or more banks designated by the board of estimate and apportionment. The interest on such deposits shall belong to the city. No money shall be drawn out of the city depository except on checks or drafts signed by the treasurer and countersigned by the comptroller, and such checks or drafts shall always be made payable to the person entitled to receive the money, unless such money be drawn for public use in the treasurer's office, in which cases, the checks, so signed and countersigned, shall be made payable to the order of the treasurer. The treasurer shall keep a separate account with every department for which funds are specially raised by tax or for which funds are raised by assessment for local or other improvements, and in every check and draft drawn by him, he must state particularly against which of such funds the check or draft is drawn (unless the money is drawn for use in the office); he shall at no time permit any fund to be overdrawn; or draw upon one fund to pay a claim chargeable to another; and no money shall be paid out by him unless upon a bill, claim, draft or warrant audited or drawn by the proper officer, board or department and in all cases countersigned by the comptroller, except for principal and interest upon the bonds of the city. (*As amended L.* 1899, *Ch.* 581).

§ 84. **Bank accounts of treasurer**—The moneys so deposited shall be placed to the credit of the city; and the treasurer shall keep bank books in which shall be entered his account of deposits in, and moneys drawn from, the banks in which such deposits shall be made; and he shall exhibit such books to the comptroller for his inspection at least once in every month, and oftener if required. The banks in which such deposits are made shall respectively transmit to the comptroller monthly statements of the moneys which shall be received and paid out by them on account of the city. (*L.* 1898, *Ch.* 182).

§ 85. **Treasurer to report to comptroller**—The treasurer shall report to the comptroller, at the end of each day's business, by items, the moneys received. (*L.* 1898, *Ch.* 182).

§ 86. **General duties of treasurer**—The treasurer shall perform such other duties, not inconsistent with the provisions of this act or the other laws of the state, as may from time to time be prescribed by ordinances of the common council. (*L.* 1898, *Ch.* 182).

Note—§§ 87–95, inclusive, omitted in White Charter as first enacted.

§ 96. **Board of estimate and apportionment; preparation of tax budget**—There shall be a board of estimate and apportionment which shall consist of the mayor, comptroller, corporation counsel, president of the common council and the city engineer, except that when the number of subordinates or the salaries thereof in the department of any of the members of said board, are to be fixed and determined, the treasurer shall temporarily take the place of the member whose number of subordinates or the salaries thereof is under consideration for the purpose of fixing such salaries or number of subordinates, and for that purpose alone. The members of the board shall meet upon the call of the mayor, or as directed by the board. The mayor shall be president of the board and the city clerk shall act

Board of Estimate and Apportionment—Continued

as secretary thereof. Within sixty days after the commencement of each fiscal year, the board of estimate and apportionment shall make an estimate of the several sums of money which it deems necessary to be raised by tax to pay the expenses of conducting the business of the city in each department and office thereof and for the various purposes contemplated by this act and otherwise by law for the fiscal year, and also to pay the principal and interest of any city indebtedness falling due during the year, provided, however, that in any city where at the time of the taking effect of the act hereby amended, the taxes for state, county and city purposes were included in one levy, the common council may by ordinance direct that the said estimate be made within sixty days prior to the commencement of such fiscal year. After it has made such estimate, it shall submit it in writing with such reasons for it in detail as it may have to give, to the common council, which shall convene and consider such estimate. The common council shall hear any taxpayer who wishes to be heard in reference thereto, and after such hearing it may adopt such estimate as is submitted to it, or diminish or reject any item therein contained, except such as relates to the city debt and adopt the estimate as thus amended; but it shall not increase any item in such estimate for any department, office or purpose. When it shall have adopted the estimate as herein provided the same shall be entered at large in its minutes and published in its proceedings; and the several sums in the final estimate so adopted shall be and become appropriated for the several departments, offices and purposes named in the estimate for the ensuing fiscal year; and such estimate shall be known as the tax budget and the several amounts therein named shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the city at such times and in such manner as is provided in and by the laws relating to the levying and collection of taxes which were in force at the time of the taking

Board of Estimate and Apportionment—Continued

effect of this act in each of the respective cities to which this act applies: provided, however, that in any city, where at the time of the taking effect of the act hereby amended, there was no provision of law for the creation or maintenance of a sinking fund, for the purposes of providing for the funded indebtedness of the city, that then, thirty per centum o all moneys or revenues received by the city, or by any officer, board or department thereof, from any source other than by municipal tax shall, upon the receipt of the same, be forthwith deposited in a separate account, or in separate accounts, in a bank or banks, designated as a city depository, to the credit of the bonded indebtedness of the city. Such deposit shall be kept as a fund separate and apart from all other funds of said city, and shall be known as the "sinking fund," and it shall remain and be used for no other purpose than for the payment of the principal of the funded indebtedness, other than that incurred for local improvements, and shall be applied and used in retiring the principal of such bonded indebtedness as it matures; and the balance of said moneys or revenues received by the city, or by any officer, board or department, from any source other than by municipal tax, shall be used for the purpose of reducing the tax budget of the city, in the manner following: Within sixty days after the commencement of each fiscal year, except as otherwise provided herein, the board of estimate and apportionment shall make an estimate of the probable revenues to be received by the city during the said fiscal year, and also an estimate of the several sums of money which it deems necessary to pay the expenses of conducting the business of the city in each department and office thereof, and for the various purposes contemplated by this act, and otherwise by law for the fiscal year, and also to pay the principal and interest of any city indebtedness falling due during the year not otherwise provided for. After it has made such estimates, it shall submit them in writing, with such reasons for them in detail as

Board of Estimate and Apportionment—Continued

it may have to give to the common council, which shall convene and consider such estimates. The common council shall hear any taxpayer who wishes to be heard in reference thereto, and after such hearing, it may adopt such estimates so submitted to it, or diminish or reject any item therein contained, except such as relates to the city indebtedness or the estimated revenue, and adopt the estimates as thus amended; but it shall not increase any item in such estimates for any department, office or purpose. When it shall have adopted the sums as herein provided the same shall be entered at large in its minutes and published in its proceedings. The several sums contained in the final estimates of revenue to be received by the city applicable for such purpose, and of moneys necessary to be raised by tax, in addition thereto, to pay the expenses of conducting the business of the city, shall be and become appropriated in the amounts and for the several departments, offices and purposes named therein, for the ensuing fiscal year. The several amounts specified in such final estimate as necessary to pay the expenses of conducting the business of the city and for the various purposes contemplated by this act and otherwise by law for the fiscal year, after deducting that portion of the estimated revenues applicable for such purpose, shall constitute the tax budget, and the amount of said budget shall be levied, assessed and raised by tax upon the real and personal property liable to taxation in the city, at such times and in such manner as is provided in and by the laws relating to the levy and collection of taxes, which were in force at the time of the taking effect of this act, in each of the respective cities to which this act applies. In case the revenues received by the city exceed the estimated amount of such revenues, or in case there may remain any unexpended balances of the appropriations made for the support of the city government for the previous year, then such excess or such unexpended balances shall be retained by the city upon deposit and included as a part of

Board of Estimate and Apportionment—Continued

the estimated revenues, and applied toward reducing the tax budget for the succeeding year. In case the tax budget has been adopted for the year nineteen hundred, prior to the time this act takes effect, then the board of estimate and apportionment shall again make an estimate to the common council, and said common council shall act thereon in accordance with the provisions of this section, in the same manner, and with the same force and effect, as if this act had become a law, prior to the adoption of the tax budget. For the year nineteen hundred, the board of estimate and apportionment of any such city shall have sixty days additional time within which to submit its estimates, as herein provided, to the common council. The several officers, boards and departments of the city shall be governed by the said estimate and apportionment and shall not incur any debts, expenses or liabilities, either in excess or independent of the several sums respectively allotted to them. The city shall have the power to borrow money with which to pay the debts and expenses of the city, within the estimate, in anticipation of the receipt of the city taxes, and revenues applicable to such purpose, and the common council may provide for the issuing of certificates of indebtedness or revenue bonds to be signed by the mayor and treasurer and countersigned by the comptroller for such purpose; and such certificates or bonds shall be paid out of the moneys received as such taxes, and revenues applicable to such purposes. It shall not be lawful for the city or any officer, board or department thereof, to expend or contract to be expended, or to incur any liability in the current fiscal year, for a greater sum than is so estimated for such officer, board or department, and so provided for by the common council in the final estimate and tax levy of such year as aforesaid. But this shall not be held to prohibit the commissioner in charge of the health department in the city from expending such sum or incurring such debts beyond the amount estimated

Board of Estimate and Apportionment—Continued

and provided for said department as may be actually necessary to prevent the spread of, or to suppress any contagious or infectious disease, or any epidemic in the city. It shall not be lawful for any officer, board or department of the city to make or enter into any contract for work, labor or services, or the hiring of employees, or for the purchase of any supplies, materials or apparatus, or the making of improvements or repairs, which by the terms of such contract involves an expenditure of money or liability therefor, which, after taking into account the expenditures and liabilities already made or incurred, shall be in excess of the amount which has been estimated and allowed to such officer, board or department in the final estimate adopted by the common council for the current fiscal year in which such contracts shall be made. Any contract, verbal or written, made in violation of this section shall be null and void as to the city, and no moneys belonging to the city shall be paid thereon, but this section shall not prevent the making of contracts for light or water for periods exceeding one year. Any officer, or any member of any board or department of the city, making or voting for any contract prohibited by this section, or auditing any accounts or claims thereunder, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine or imprisonment, or by both, in the discretion of the court before which such conviction shall be had. But except in any city where at the time of the taking effect of the act hereby amended, there is no provision of law for the creation or maintenance of a sinking fund for the purpose of providing for the funded indebtedness of the city, or as may be otherwise provided by law when any moneys or revenues are received by any officer, board or department of the city from any source other than by municipal tax, such moneys or revenues may be used and applied towards and in addition to the funds so estimated

and allowed as aforesaid, in such manner as in the judgment of said board of estimate and apportionment may be most beneficial to the city. Where, in any city, under existing laws applicable thereto, the board of estimate and apportionment is authorized and directed to make out a preliminary estimate and apportionment of the several sums of money which they deem necessary to be raised by tax to pay the expenses of conducting the business of the city in each department and office thereof, and for the various purposes authorized by law for the next fiscal year, and also to pay the principal and interest of any city indebtedness falling due during the year, it shall be lawful for the board of estimate and apportionment to make such preliminary estimate and apportionment, and for the common council to adopt the same as a preliminary estimate and apportionment; and the city may, from time to time, borrow money for the purpose of paying such expenses and debts within the amount of such preliminary estimate and apportionment in anticipation of the receipt of the city taxes, by the issuing of certificates of indebtedness or revenue bonds in the manner above prescribed; but in such cases the board of estimate and apportionment shall, at the proper time, make up, and the common council shall adopt the final estimates as hereinbefore provided for. (*Amended L.* 1899, *Ch.* 581; *L.* 1900, *Ch.* 415; *L.* 1900, *Ch.* 433).

Banks may transfer city bonds to superintendent of banks—Banking Law, § 64.

Funded debts and municipal bonds—General Municipal Law, §§ 4–46.

Funded debt defined—People ex rel. Peck vs. Carpenter, 31 App. Div. 603 (1898).

Money to pay bonds must be provided—Marsh vs. Town of Little Valley, 64 N. Y. 112 (1876).

Provisions as to funded debts an enabling act for cities—City of Poughkeepsie vs. Quintard, 130 N. Y. 273 (1892).

Protection of municipal bond holders—L. 1843, Ch. 302.

Municipal securities—Am. and Eng. Enc. Law, 2d Edn., Vol. 21, pp. 13–82.

Limitation of city debt—State Constitution, Art. VIII, § 10.

Power to borrow money limited by law—Wells vs. Town of Salina, 110 N. Y. 280; distinguished, Birge vs. Berlin Iron Bridge Co., 133 N. Y. 477 (1892), at p. 486.

Constitutional debt limit discussed generally— Kronsbein vs. City of Rochester, 70 App. Div. 404.

Estimates only are made by board of estimate, but common council appropriates—Kirk vs. McGuire, 32 Misc. 596.

Board of estimate authorized to appropriate money for support of charitable institutions—L. 1895, Ch. 754; as amended L. 1902, Ch. 155.

May appropriate $10,000 annually for the purchase of works of art—General City Law, § 120.

Appropriation for the examining board of plumbers—General City Law, § 54.

§ 97. **Fiscal year, estimates and minutes of board of estimate**—The fiscal year of every city shall commence on the first day of January; and on or before the first day of November in each year all heads of departments and officers empowered by this act, or by city ordinance, to control or authorize expenditures, shall furnish to the mayor estimates in writing of the amount of expenditures for the next fiscal year, in their respective departments or offices, including a statement of the salaries of all their officers and other employees, which estimates the mayor shall lay before the board of estimate and apportionment at its first meeting thereafter. It shall be the duty of the city clerk to keep a journal of all the proceedings of the board of estimate and apportionment and of every vote by ayes and noes taken at any meeting thereof. The minutes of each meeting shall be printed in full within six days after its adjournment and immediately distributed, one to each member of the board and of the common council, one to the head of each department and one to every taxpayer entitled thereto under section four hundred and eighty-two of this act. At the end of the year the printed minutes shall be indexed and bound in adequate number. (*L.* 1898, *Ch.* 182).

The political and legislative year begins January 1st—State Constitution, Art. X, § 6.

Old Charter

NOTE—The Old Charter contained provisions as to annual reports and estimates as follows:

§ 46. **Fiscal year, reports and estimates**—The fiscal year shall begin on the first day of January and terminate on the thirty-first day of December of each year, and on the last meeting of the common council of each year, each officer and department of said city shall present to the common council a detailed statement of the transactions of his office or department during the preceding year, giving an estimate of the amount necessary to meet the expenses of such office or department during the coming year; and such other matters as the common council may specifically request; and on said last common council meeting of each year the common council shall audit and settle the accounts of the city treasurer, and the accounts of all other officers and persons having claims against the city, or accounts with it, and shall make out a statement in detail of the receipts and expenditures of the corporation during the preceding year, in which statement shall be clearly and distinctly specified the several items of expenditure made by the common council, the objects and purposes for which the same were made, and the amount of money expended under each, the amount of taxes raised for the general contingent expenses, the amount raised for lighting the city and for police, the amount of highway taxes and assessments, the amount of assessments for paving, repairing and opening streets and for repairing and building bridges, the amount borrowed on credit of the corporation and the terms on which the same were obtained, and such other information as shall be necessary for a full understanding of the financial affairs of the city, which statement shall be signed by the mayor and city clerk and filed with the clerk of the city, and the same shall be published by the clerk, at the expense of the city, in a newspaper in which the proceedings of the common council

are published. The common council shall, at its first regular meeting in each year, or as soon as practicable, select one daily newspaper in said city for the publication of the proceedings, resolutions and ordinances of the common council, and of the executive board of said city, and all the notices and advertisements and proceedings of any of the officers of said city, and of all the committees of the common council during the current fiscal year, provided such publication shall be under and in accordance with the terms of a written contract with the city, theretofore made and executed by the proprietor or proprietors of such newspaper, and the mayor of the city of Rochester under the direction and approval of the common council. (*As amended L.* 1897, *Ch.* 784).

§ 98. **Salaries of city officers**—The board of estimate and apportionment has authority to fix the salaries or compensation of all city officers and employees, except as otherwise provided in this act, and except as to such officers and employees as are required to serve without compensation. But the salary or compensation of every officer and employee shall be thus fixed before his election or appointment, except in the first instance after this act takes effect, and shall not thereafter be changed until the expiration of the term for which he was elected or appointed. (*L.* 1898, *Ch.* 182).

The power of the board of estimate and apportionment to fix salaries is absolute, and common council has no authority to reduce—Pryor vs. City of Rochester, 166 N. Y. 548.

When the salary of an officer is fixed it can be recovered if withheld—Grant vs. City of Rochester, 79 App. Div. 460 (1903); affirmed, 175 N. Y. 473. French vs. City of Rochester, 79 App. Div. 645; affirmed on authority of Grant case, *supra*, 175 N. Y. 474.

Assignment of salary before due is void—Bliss vs. Lawrence, 48 How. Pr. 21; 58 N. Y. 442.

NOTE—§§ 99–106, inclusive, are omitted from the White Charter as first enacted.

§ 99. **Laws in force prior to 1900**—Until the provisions of this act relating to the board of estimate and apportionment, the adoption of the tax budget and the levying of the sums therein named can become operative, the affairs of the city on the subject of finances and tax budgets shall be governed by the laws relating to the same which were in force in the city at the time of the passage of this act, except as is otherwise provided in this section. The fiscal year of any city affected by this act, of which the year eighteen hundred and ninety-nine is a part, shall be reduced to and shall terminate with the period which will expire with the close of the thirty-first day of December, eighteen hundred and ninety-nine. The officers, boards and departments which are charged by existing laws with the duty of making up, adopting or confirming an estimate, apportionment or tax budget of the several sums necessary to be raised by tax in the city for the support of the city government and otherwise by law and the payments of its debts and expenses during the year eighteen hundred and ninety-nine, and who are directed to levy the same upon the real and personal property liable to taxation in the city and to cause the same to be raised by tax, shall, during the year eighteen hundred and ninety-nine, make up and adopt such estimate, apportionment and budget and cause the sums therein named to be levied in the same manner as is prescribed in existing laws; but such estimate, apportionment, budget and levy shall be made, adopted, confirmed and directed only for the period intervening between the commencement of the fiscal year of the city in the year eighteen hundred and ninety-nine and the first day of January, nineteen hundred; and the making and adopting of such estimate, apportionment and budget, and the levying of the same as herein prescribed, shall be valid and effectual. Where, in any city, under the laws existing at the time of the passage of this act, the fiscal year of the city begins on a day other than the first day of January, and there is a board of estimate and apportionment in the city, said board

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shall, during the month of December, eighteen hundred and ninety-nine, make up a preliminary estimate and apportionment of the sums which they deem necessary to be raised by tax to pay the debts and expenses of the city during the year nineteen hundred, and shall submit the same to the common council, and the city shall have power to deal with the same and to borrow money thereon on the faith and credit of the city in the manner prescribed by such laws; but thereafter and during the year nineteen hundred, the board of estimate and apportionment provided for by this act shall make, and the common council shall adopt the final estimate for such city for that year as provided in section ninety-six. Where in any such city a board of estimate and apportionment does not exist under the laws which were in force in such city at the time of the passage of this act, the board of estimate and apportionment provided for by this act shall after the first day of January, make up the estimate which is authorized and provided for by said section ninety-six. (*Added by L. 1899, Ch. 581*).

NOTE—§§ 97-106, inclusive, omitted in White Charter as first enacted.

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§ 8—. **Claims and actions for damages against the city**—The common council shall examine, settle and audit all accounts, demands and claims against the city, as well of its officers as of other persons, except as otherwise expressed by this charter, or other law, and shall have authority to direct the raising of such sums as shall be necessary to defray the same, and the contingent expenses of the city, subject to the limitations and restrictions hereinafter contained; they shall have the power to borrow money, as in the next section provided, and also to borrow against any tax or assessment levied but not collected, to an amount not exceeding the amount thereon uncollected, and to issue therefor the obligation of the city, pay-

able in not more than eight months with interest at the rate of not over six per centum per annum. No unliquidated claim or demand shall be received for audit, unless made out in detail, specifying, if for labor or services, the time when, the place where, by whom and under whose direction, and by what authority performed; if for merchandise, material and other articles furnished, the item or items thereof, by whom ordered and when and to whom delivered, and shall be certified correct by the head of the department for which the work was done or materials furnished; and if for damages for wrong or injury, or negligence, when, where and how occasioned; nor unless accompanied by an affidavit that the claim, and the items and specifications thereof are in all respects just and correct; that no payments thereon have been made, and that no setoffs exist against the same, or any part thereof, except those stated. No action or proceeding to recover or enforce any claim, debt or demand against the city shall be brought until the expiration of forty days after the claim, debt or demand shall have been presented to the common council for audit in the manner and form aforesaid. All actions brought against the city to recover damages or other relief for injuries to the person or property, caused by negligence shall be commenced within one year from the time of receiving the injuries. No action or proceeding shall be maintained against the city for personal injuries unless a notice of the intention to commence such action and of the time and place at which the injuries were received, shall have been filed with the counsel to the corporation or other proper law officer thereof, within six months after the time of receiving the injuries. (*As amended L. 1897, Ch. 784.*

As to ordinary claims against city—See White Charter, § 65, this book, *ante*.

As to claims for damages for injuries to person or property—See White Charter, § 41, this book, *ante*, and cases there cited.

§ 81. **Power to borrow money** — For the purpose of paying such expenses, the common council shall raise annually such sums as shall be estimated and reported by the finance committee as necessary, in the manner hereinafter provided. The said finance committee may, at any time, require from the chairman of each of the committees of the common council, and it shall be his duty to furnish to the finance committee, and in such form as they shall require, full and particular estimates of the amount needed by the various funds and departments in their charge, and especially for lighting the city, for the support of the police department, for the general contingent expenses of the city, for the support and relief of the poor, for the maintenance and improvement of public parks and squares, the expense of the board of health, and for all other necessary expenses of said city during the next fiscal year. The finance committee shall prepare, and on or before the first regular meeting of the common council in March of each year, they shall present to said common council a statement, in detail, of the several sums which will be needed for said funds and to meet the expenses of the year for all proper municipal purposes, and showing what sums will be, in their opinion, necessary to be raised for other specific purposes. The common council may alter or amend such statement in their discretion, but not so that the aggregate amount to be raised shall exceed that so reported to them by the finance committee, unless such increase be made by a vote of two-thirds of all the members elected, subject to the approval of the mayor. They shall cause such estimates, as approved by them, to be published for six successive days in one or more newspapers of said city before finally determining the amount of the general tax, which must be determined by the first regular meeting in April in each year. A vote of a majority of all the members of the common

Power to borrow money—Continued

council shall be necessary to fix such amount, and the statement as finally adopted, shall be entered at large in the minutes. Said common council shall also raise annually by tax, with the general taxes of said city, an amount sufficient to pay interest upon all the bonds issued by said city, and all the principal, or installments of principal of said bonds falling due within the then current fiscal year, for the payment of which provision is not otherwise made. No member of the Common Council shall vote for the payment of any money out of any of the general funds herein named, or out of any other fund in the city treasury, knowing that such fund is without money to pay the same; and any person violating this provision shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars or be imprisoned in the Monroe county penitentiary for the period of ten days; and the district attorney of the county of Monroe is hereby specially directed, and it shall be his duty, to prosecute all persons violating this provision, upon the complaint of any taxpayer of said city. In case the sums above specified, or any of them, shall prove insufficient for the purposes for which the same were raised, then the common council shall have power, by a vote of three-fourths of all the members elected, subject to the approval of the mayor, to provide for borrowing, upon the credit of the city, so much money as may be deemed necessary to supply such deficiency, and the amount borrowed shall be assessed and collected as part of the city taxes of the ensuing year, in addition to the other sums provided for. In case the common council shall order the whole, or any part of, the expense of any improvement or public work, or the amount of any proper municipal expenditure or liability, to be paid out of the public treasury of the city, and not by local assessment or otherwise, and

Power to borrow money—Concluded

the amount in the treasury, or already levied by general tax shall not be sufficient for the purpose, the common council may borrow, upon the credit of the city, the necessary amount, and the same shall be raised in, and paid out of, the next general tax levy; except that in order to pay the same, or any part thereof, the common council may, at its election cause to be issued the bonds of the city maturing in not more than twenty years from their date, and bearing such rate of interest as may be found necessary to effect a sale thereof, at not less than the *part, or said common council may direct the note or other obligation of the city to be issued under this section, which, however, shall be payable in not more than eight months from its date, but nothing hereinbefore contained shall, in any wise, affect the right of the city to issue its bonds under any of the other sections of its charter or any other statute. (*As amended L.* 1896, *Ch.* 777).

NOTE—**Provisions of the Old Charter relating to** the renewal of outstanding bonds, the exchange of water works bonds, the general sinking fund, and certain duties of the treasurer, are printed in this book at pp. 210 to 214, inclusive, being left in the same position they occupy in Title V, Old Charter.

*So in session laws. Should read "at not less than the par value of any such bond."

ARTICLE V

DEPARTMENT OF PUBLIC WORKS

§ 107. **Commissioner of public works and deputy**—There shall be a commissioner of public works, who shall be the head of the department of public works. His term of office shall be two years, unless sooner removed by the mayor, and he shall be appointed by the mayor, within ten days after the beginning of each mayorality term. The commissioner shall appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. During the temporary absence or inability of the commissioner, or his suspension or removal from office, his deputy shall discharge the duties of the office. In case of a vacancy in the office of commissioner, such vacancy shall be filled by the mayor within ten days after its occurrence, and in the meantime and until such appointment shall take effect, the deputy shall act as commissioner. (*L.* 1898, *Ch.* 182).

Oath of office—Public Officers Law, § 10. Powers of deputies, *Id.*, § 9. Failure to take oath, Penal Code, §§ 42–43. Effect on official acts of failure to take oath, Public Officers Law, § 15.

§ 108. **Bonds of commissioner and deputy**—The commissioner and deputy commissioner shall each give a bond to the city with sureties, for the faithful discharge of the duties of their respective offices, in a penalty to be prescribed by the common council, which bond, as to its form, and the sureties thereto, shall be approved by the mayor. (*L.* 1898, *Ch.* 182).

Official bonds generally—Public Officers Law, §§ 11–13. Acting without filing bonds—Penal Code, §§ 42, 43, and Public Officers Law, § 15.

§ 109. **Duties of commissioner of public works as to streets.** — The commissioner, subject to the provisions of this act, the other laws of the state and the ordinances of the common council, has cognizance, direction and control of the construction, alteration, repair, care, cleaning, paving, flagging, lighting and improving streets, ways and sidewalks; of the construction, alteration and repair of all city buildings, and of all docks and bridges belonging to the city; of all public sewers and drains in the city; of the construction, maintenance, extension and repair of the city water works; and has the care, superintendence and management of all grounds belonging to the city. But in the exercise of his powers and the discharge of his duties, he shall make no expenditure, nor shall he create any debt against the city, unless he be authorized so to do by the general or special ordinances of the common council; except that he shall have power to repair any sidewalk or bring the same to the true grade, where the owner of the abutting property shall neglect to repair or grade the same for five days after written notice so to do has been served on him either personally or by delivering the same at his residence or, if he be a non-resident, by mailing the same to him at his last known place of residence, or if the name of the owner or his place of residence cannot be ascertained after due diligence, by posting the same in a conspicuous place upon the premises; and except that he shall have the power to clean snow or ice from any sidewalk where the same has remained thereon for more than twelve hours. A bill for the expense incurred in making such repairs or grading or cleaning shall be presented to the owner personally or by leaving the same at his residence, or if he be a non-resident, by mailing the same to him at his last known place of residence, or if the name of the owner or his place of residence cannot be ascertained after due diligence, by posting the same in a conspicuous place on the premises; and if he shall fail to pay the same within ten days thereafter, the commissioner shall file each year immediately preceding the time for the

making of the annual assessment roll, his affidavit of the actual cost of the work, together with a statement as to the property in front of which the repairing or grading or cleaning was done, with the assessors of the city, who shall, in the preparation of the next assessment rolls for the general city taxes assess such amount upon such property, and allegations thereon shall be heard, and such assessments shall be collected at the same time and in the same manner as other city taxes, and as a part thereof, and the assessors shall have the power to amend and correct such assessments as they shall deem proper, at the same time and in the same manner as other city taxes. (*As amended L. 1903, Ch. 471*).

A municipality may not empty its sewers upon private property without acquiring the right so to do—Chapman vs. City of Rochester, 110 N. Y. 273; N. Y. C. & H. R. R. Co. vs. City of Rochester, 127 N. Y. 591; Hoffmeyer vs. City of Brooklyn, 162 N. Y. 584.

A municipality is not liable for consequential damages when authorized by the legislature to make a public improvement unless such damages be caused by negligence, misconduct or want of skill on the part of its servants or agents—Atwater vs. Village of Canandaigua, 124 N.Y. 602; Hughes vs. City of Auburn, 161 N. Y. 96; Uppington vs. City of New York, 165 N. Y. 222; Fries vs. N. Y. C. & H. R. R. Co., 169 N. Y. 278; Holland House Co. vs. Baird, 169 N. Y. 136.

A municipal corporation does not insure against damages from works of its construction. Its obligation and duty in respect to sewers is measured by the exercise of reasonable care and vigilance. Liability can only be predicated upon its neglect or misconduct—Smith vs. Mayor, 66 N. Y. 295; Jenny vs. City of Brooklyn, 120 N. Y. 104; Paine vs. Village of Delhi, 110 N. Y. 224.

§ 110. **Duties of commissioner of public works as to the water works**—It is also the duty of the commissioner to appoint, to hold office during his pleasure, within thirty days after his appointment, in the first instance, after this act shall take effect, and thereafter when a vacancy shall occur, a superintendent of water works, and to see that the city has an abundant supply of wholesome water for public and private use; to devise the plans and sources of water supply; to plan and supervise the distribution of water through the city; to pro-

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Water Works Continued

tect it against contamination; to prescribe rules and regulations for its use, which, when ratified and approved by the common council, shall have the same force and effect as an ordinance by the common council enacted. He shall have power, with the assent of the board of estimate and apportionment, to establish rates of rents to be charged and paid annually for the supply of water, or for the benefits resulting therefrom, to be called "water rents," apportioned to the different classes of buildings in said city in reference to their dimensions and the ordinary uses of water for the same, and to vacant lots, as may be practicable, and, from time to time, to modify and amend, increase or diminish such rates and to extend them to other descriptions of buildings, lots, establishments and uses. He shall also have power, with like assent, to establish rates for the use of water in buildings, establishments, trades and other purposes which consume water beyond the quantity required for ordinary purposes, and may require the payment to him, in advance, of the rates thus established, before permission to use such extra quantity of water shall be given. The regular water rents shall be collected from the owners of all lots and buildings which shall be situated upon any street or avenue in which the distributing pipes are now or may hereafter be laid and from which such lots and buildings can be supplied with water; and such regular rents, as well as the amounts due and unpaid for the introduction and measurement of the supply of water to such lots and buildings, shall be, like other taxes of the city, a lien and charge upon such lots and buildings as herein provided. All special rates for the use of water shall be paid to the said commissioner, who shall daily report and pay the amount thereof to the city treasurer. It shall be the duty of the said commissioner at and within such time in each year as the common council shall by ordinance determine, to make out a list or roll for each ward or assessment district of the city, similar to the rolls made out by the department of assessment and taxa-

tion, and, in which, among other things, he shall set out the amount of regular water rent assessed upon each lot, part of lot or building, and all amounts remaining due and unpaid for the introduction and measurement of the supply of water at the time designated in said ordinance for the completion of such list or roll. He shall then cause notice to be published in the official newspapers, for at least three days, of a time and place at which hearing shall be given to those who desire to examine the said rolls and to present their grievances, and after such hearing, which shall be on at least two different days, he shall correct said rolls, if need be, and shall certify the same to the common council. The common council shall thereupon direct by ordinance the levying of such water rents upon the property described in said rolls and the amounts appearing thereon shall be levied, collected and enforced at the same time and in the same manner as is provided for the collection of other taxes in the city; but the common council may direct that such water rents shall be extended in a separate column upon the assessment rolls of the city. (*Amended L.* 1899, *Ch.* 581).

Pipe lines in streets—Transportation Corporations Law, §§ 11, 15, 46 and 48

Enforcement of rules controlling source of potable water supply—Public Health Law, § 71.

Contracts for purifying apparatus—L. 1894, Ch. 667.

Rights of private water company to lay pipes in city streets—Rochester and Lake Ontario Water Company vs. City of Rochester, 84 App. Div. 1, affirmed, 176 N. Y. 30.

Water works property of municipal corporation held not taxable—People vs. Brooklyn, 111 N. Y. 505; City of Rochester vs. Rush, 58 N. Y. 204; **water works property outside of city boundaries held taxable**—People ex rel. Amsterdam vs. Hess, 177 N. Y. 42; People ex rel. Rochester vs. Gay, 157 N. Y. 678; **and not exempt under provisions of Tax Law exempting special franchises**—People ex rel. City of Rochester vs. De Witt, 87 App. Div. 493, affirmed, 179 N. Y. 575.

Riparian owners along small, fresh water or navigable lakes or streams, are entitled to the enjoyment of the undiminished and undisturbed flow of water, and a municipality has no right, even though authorized by the legislature, to diminish the flow of such water without making compensation—Smith vs. City of Rochester, 92 N. Y. 463; Neal vs. City of Rochester, 158 N. Y. 113.

Recission of contract for water works on account of mistake—Moffett, Hodgkins and Clarke Co. vs. City of Rochester, 82 Fed. Rep. 733, reversed, 33 C. C. A. 211; C. C. affirmed, 178 U. S. Rep. 373.

§ 111. **Commissioner of public works to appoint superintendent of parks; powers and duties.** It is also the duty of the commissioner to appoint, to hold office during his pleasure, within thirty days after his appointment, in the first instance, after this act shall take effect, and thereafter when a vacancy shall occur, a superintendent of parks, who shall have, under the direction of the commissioner, the care, management, custody and control of all the parks of the city, and of the streets passing through or intersecting the same, and all the shade trees of the city. Subject to the direction of the commissioner and to the ordinances of the common council, he shall prescribe the powers and duties of the subordinates. Subject to the ordinances of the common council and the direction of the commissioner, he shall have the expenditures of all the money apportioned to this branch of the department by the action of the board of estimate and apportionment and of the common council as in this act provided. He shall keep an account of such expenditures and prepare bills against the city in items for the same, in such form, with such verification and vouchers as may be prescribed by the comptroller, and such bills shall be submitted to the comptroller, and, when finally audited, as in this act provided for other city claims, shall be paid by the city treasurer as provided in the case of other claims against the city. The superintendent, under the direction of the commissioner, may employ all the laborers needed upon the parks and streets above mentioned, and shall fix their wages, subject to the approval of the commissioner and the board of estimate and apportionment, and he may, in his discretion, make all the ordinary repairs and improvements upon the parks and such streets, subject also to the direction of the commissioner and to the approval of the board of estimate and apportionment. He shall conduct, with the aid of the corporation counsel, all negotiations and proceedings for the acquisition of lands for any park, or for any addition to any park, when the acquisition of such land shall have been authorized by an ordinance

passed by the affirmative vote of at least three fourths of the members elected to the common council; and when such lands shall have been acquired he shall regulate and improve the same for park purposes. He shall also make such rules, regulations and ordinances, not inconsistent with the ordinances of the common council and the laws of the state, as he may deem proper for the government, management and care of any park, and of the streets in and through the same, and of such other streets, being approaches to the park, as may be designated by ordinances of the common council as parkways, and such rules, regulations and ordinances, when approved by the common council, shall have the force and effect of city ordinances. He shall also have such other powers and be charged with such other duties not inconsistent with the provisions of this act and the other laws of the state, as the commissioner may direct or as the common council may, by ordinance, define and prescribe. *L.* 1898, *Ch.* 182.

Note—The Rochester park system is under the control of the board of park commissioners, created by L. 1888, Ch. 113. The authority of this board is continued by the White Charter, § 483, as amended, L. 1903, Ch. 31. All the laws relating to Rochester parks are printed in full in this book, *ante*. See Index.

Note—§§ 112–119, inclusive, are omitted from the White Charter as first enacted.

§ 120. **Board of contract and supply and public contracts**—There shall be a board of contract and supply, composed of the mayor, comptroller, commissioner of public works, corporation counsel and city engineer, which shall be a bureau in the department of public works. It shall be the duty of such board after public notice, and in accordance with regulations to be prescribed by general ordinances of the common council, to let to the lowest bidder, who will give adequate security for the performance of his contract, all contracts for the performance of any work, or for the supply of any materials for the department of public works, department of public safety, department of public instruction, department of charities and correction of the city in all cases where the work and materials will cost to exceed fifty dollars, unless by an ordinance passed

by a unanimous vote of the common council and by the unanimous approval of the board of estimate and apportionment, it is determined to be impracticable to procure the work or materials by contract; or unless in case of accident or other injury by which the heating or plumbing system of any of the public buildings, or by which any of the fire engines or hook and ladder trucks, or any of the pumps, engines or boilers used in connection with the city water works shall become disabled, in which emergency the commissioner of the appropriate department shall cause such repairs thereto to be made upon filing with the board of contract and supply a certificate approved by the mayor showing such emergency and the necessity for such repairs; provided, however, that in case any contract shall involve the erection or use of wires, poles or other structures, or the laying of pipes and mains, in the streets, squares and public places of the city, or involves the use of the poles, structures, mains or pipes of other companies or individuals, then and in that event no such contract shall be awarded to such lowest bidder, unless such bidder shall have obtained a franchise, as provided in section nineteen, or unless such bidder had erected, laid and was maintaining and using poles, wires, structures, pipes, and mains in the public streets, squares and places at the time of the taking effect of the act hereby amended. The board shall have power to reject all bids, if, in its opinion, the lowest bid is excessive. The public notice above mentioned must describe the work and materials for which contracts will be let at the next meeting of the board, and the day and hour and place of such meeting. Specifications for every public improvement must be prepared and set forth with such details as will adequately inform all persons proposing to bid, of the nature of the work to be done and of the materials to be supplied, and the same shall be printed and copies thereof shall be delivered to applicants therefor. But nothing herein, excepting the letting of contracts, shall interfere with the duty and authority of the commissioner of public works and

of the department of parks. All materials and supplies required in any office, court, board or department, shall be called for in writing, and shall be contracted for by the board of contract and supply in the manner above provided; but where any work or repairs needed to be done or materials or supplies to be furnished shall not exceed fifty dollars in cost, the board of contract and supply may authorize the commissioner of public works, or the commissioner of public safety, as the case may be, to give written orders therefor and the bills so incurred shall be presented to the comptroller for examination and audit, accompanied with such orders. When an improvement shall be contracted for, the expense of which is to be assessed, either in whole or in part, upon property benefited thereby, the comptroller shall certify that fact and the amount of the contract price to the officers or assessors who have authority in the premises, who shall thereupon proceed to apportion the cost of such improvement and make an assessment roll therefor as hereinafter provided. (*Amended L.* 1899, *Ch.* 581; *L.* 1900, *Ch.* 415).

Inviting bids for expensive materials and accepting cheaper, held illegal—Hapfel vs. Blessing, 37 Misc. 47.

§ 121. **Bids for public work**—Every contract for public improvement within the city shall be based upon estimates of the whole cost of such improvement furnished by the proper officer, board or department having charge of the improvement. No contract shall be let except after the receipt of bids, and no bids shall be received at any other time than at a regular meeting of the board, and unless they conform to the rules of the board and the general ordinances of the common council. All bids must in addition be endorsed with the title of the work to which they relate, the name of the bidder and his residence. (*L.* 1898, *Ch.* 182).

§ 122. **Opening of bids; newspaper reporters welcome**—It shall be the duty of each member of the board to be present at the time and place mentioned in the public notice referred to in section

one hundred and twenty. After all the bids have been presented, but not until a half hour after the time stated in the public notice for holding the meeting, all bids shall be opened by some member of the board or by the clerk in the presence of the bidders and newspaper reporters there present, though a majority be not then present, and an abstract of all of them, with the prices and security offered, shall be immediately copied in a book kept for that purpose without any change, correction or addition whatever. All bidders and reporters of accredited newspapers shall have the privilege of being present when the bids are opened. The board may refuse all bids received at any meeting and advertise again for new bids to be received at another meeting as above prescribed. Neither the principal nor sureties on any bid or bond shall have the right to withdraw or cancel the same until the board shall have let the contract for which such bid is made and the same shall have been duly executed. (*As amended L. 1899, Ch. 581.*)

§ 123. **Bids for public lighting** All the oil, gas and electric lights of the city shall be supplied pursuant to section one hundred and twenty of this act and under and pursuant to contracts to be let by the board of contract and supply, which contracts shall cover and include the lighting and supplying of the lamps and the oil, gas, electric currents, the cleaning of the lamps and all the materials required in the use and repair thereof. The specifications for bids for the care, maintenance and lighting of the city electric lamps shall provide for the care and lighting thereof for a period not exceeding five years. They shall require each bidder to furnish with his bid a certified check, payable to the order of the treasurer of the city, in the sum of ten thousand dollars, which sum shall be forfeited to the city in case the bidder depositing the same shall be awarded the contract and shall not execute the same and furnish the bond required, which bond shall be

in the penalty of fifty thousand dollars. In case the contract be not awarded to the bidder, or if awarded, the contract and bond shall be duly executed, such check shall be returned to him. (*L.* 1898, *Ch.* 182).

§ 124. **Clerk of board of contract and supply.**—The board of contract and supply shall appoint a clerk, to hold office during its pleasure, whose duty it shall be to keep a full journal of all the proceedings of the board, including every vote thereof by ayes and noes. The minutes of each meeting of the board shall be printed in full within six days after its adjournment and distributed immediately, one copy to each member of the board and of the common council, one to the head of each department and one to every taxpayer entitled thereto under section four hundred and seventy two of this act. At the end of each year the printed minutes shall be indexed and bound in adequate number. (*L.* 1898, *Ch.* 182).

Note.—At its first meeting in 1900 the board of estimate and apportionment created the office of city purchasing agent in the department of public works. (Proc. Bd. Est., 1900, p. 1). Since that time the offices of clerk of the board of contract and supply and of purchasing agent have been filled by the same official.

Note.—§§ 125-131 inclusive, are omitted from the White Charter as not enacted.

§ 125. **Street improvements and petitions therefor.**—Whenever the common council shall order and direct that any street, avenue, alley, road, lane, square, open court, dock, wharf, or place, or part of the same, in said city, be paved, repaved, or repaired, separate plans and specifications shall be prepared for doing such work with each kind of pavement or material specified in the petition therefor, or, if not so specified, with each kind of pavement or material specified by the common council; and proposals shall be invited, pursuant to the provisions of this act for doing such paving, repaving or repairing, with each kind of pavement or materials specified in the petition therefor, or by the common council. In case the ex-

pense of such paving, repaving or repairs is to be assessed upon the property benefited thereby, a majority of the property owners liable to be assessed therefor, owning not less than two-fifths of the feet front of property, exclusive of city property, fronting the street, avenue, alley, road, lane, square, open court, dock, wharf, or place, or part of the same, to be so paved, repaved or repaired, may, at any time within one week after proposals for doing such work have been received and opened, present to the board of contract and supply a petition, or other writing, designating the kind of pavement or material to be used in making said improvement; and if the expense of such improvement is not to be assessed upon the property benefited thereby, or, if to be assessed upon the property benefited thereby, the property owners shall not make the designation as in this section provided, the common council shall, not later than at its next regular meeting after the expiration of one week from the reception and opening of such proposals, designate the kind of pavement or material to be used in making such improvement; and the contract for such improvement, if awarded, shall be awarded for the kind of pavement or material so designated by the property owners or common council as aforesaid, and to the lowest bidder for doing the work with the kind of pavement or material so designated. (*Added by L. 1902, Ch. 4151.*

NOTE—§§ 125-131, inclusive, omitted from White Charter as first enacted.

§ 132. **City engineer and assistants**—There shall be a city engineer, to be appointed by the mayor, and to hold office to the end of the term of the mayor appointing him, unless sooner removed by the mayor, whose office shall be a bureau in the department of public works. He shall be a civil engineer of at least five years practical experience in his profession. It shall be his duty to perform all the ordinary engineering and surveying services needed in the affairs and business of the city, and to supervise, under the general directions of the commissioner of public works, all the work done for the city in

which the skill of his profession may be required or useful. He shall act as the superintendent of public buildings, bridges, docks and wharves, under such regulations as may be prescribed by ordinances of the common council, and under the direction of the commissioner of public works. He shall employ such subordinates to serve during his pleasure, and shall have such other assistance as the board of estimate and apportionment shall prescribe. (*L.* 1898, *Ch.* 192).

Public buildings may by leased to veteran organizations at nominal rent—General Municipal Law, § 26.

Custody of school buildings within authority of city engineer—People ex rel. Gaffigan vs. Rickerson, 56 App. Div. 588.

Foreign flags not to be displayed on public buildings without consent of mayor—L. 1895, Ch. 36.

Public buildings may be insured - General Municipal Law, § 23.

Note. §§ 133-141, inclusive, are omitted from the White Charter as first enacted.

§ 142. **Commissioner of public works is highway commissioner**—Except as otherwise provided in this act, the other laws of the state, or by ordinances of the common council, the commissioner of public works has over the streets within the city all the jurisdiction, and is charged with all the duties of commissioners of highways within the towns of the state. (*L.* 1898, *Ch.* 182).

Changing street lines—St. Vincent O. A. vs. Troy, 76 N. Y. 108.

Coasting in streets—Arthur vs. Cohoes, 56 Hun 30, affirmed, 134 N. Y. 587.

Storing wagons in streets—Cohen vs. Mayor, 113 N. Y. 532.

Rights of private water company to lay pipes in streets—Rochester and Lake Ontario Water Co. vs. City of Rochester, 84 App. Div. 71; affirmed, 176 N. Y. 36.

§ 143. **Discontinuing street**—Whenever the common council shall contemplate the discontinuance of any street, it shall publish a notice for ten days in the official newspapers of the city of its intention to do so, and that all persons interested in the street may be heard in reference thereto at a time stated in such notice. If it shall determine to discontinue the street and any person shall claim

to be damaged by such discontinuance, the damages of such person, unless agreed upon between him and the commissioner of public works, subject to the written approval of the board of estimate and apportionment, must be ascertained and determined in the manner provided in the condemnation law. But an ordinance discontinuing any street shall require the affirmative vote of three-fourths of the members elected to the common council. (*L.* 1898, *Ch.* 182).

City cannot close street without making compensation—Egerer vs. N. Y. C. etc., 41 St. Rep. 455.

§ 144. **Abandoned streets**—Every street that shall not have been traveled or used as a street for six years, and every street that shall not have been opened and worked within six years from the time it shall have been dedicated to the use of the public or laid out, shall cease to be a street; but the period during which any action or proceedings shall have been or shall be pending in regard to any such street shall form no part of such six years. (*L.* 1898, *Ch.* 182).

§ 145. **Streets by public use**—All lands which shall have been used by the public as a street for twenty years or more shall be a street with the same force and effect as if it had been duly laid out and recorded as such. (*L.* 1898, *Ch.* 182).

§ 146. **Common council may order street improvements**—It shall be lawful for the common council to order and direct the grading, paving, altering, repaving, repairing or regrading of any of the streets, sidewalks, wharves, docks, roads, avenues, open courts, squares, places, alleys or lanes in the city and to order the whole or any part of any street or avenue in the city to be sprinkled with water for such time as it shall deem proper, and to order and direct the construction, repairing or cleansing of common sewers, vaults or drains in any street, road, avenue, place, open court, alley, lane or lot, or private drain leading from any house or lot, and the making or repairing of any bridge, arch or culvert over any stream or run of water in

the city, and the leveling or fencing in of any vacant lot in the city and the cleansing of sidewalks, gutters and streets in front of all lots in the city from snow and from all dirt, filth and other obstructions or incumbrances so as to permit the free and uninterrupted use of said sidewalks and streets in an easy and convenient manner. All proceedings preliminary to the passage of any ordinance by the common council directing any of the improvements or the performance of any of the work so ordered as aforesaid, required by the provisions of any law in force at the time of the passage of this act, shall apply to and be deemed necessary as a condition precedent to the passage of such ordinance in the city to which said laws apply. (*As amended L.* 1899, *Ch.* 518).

County roads and other highways—Highway Law, §§ 54, 80, 97; Transportation Corporations Law, § 132.

Sewers and drainage in towns adjoining cities—L. 1901, Ch. 348.

§ 147. **Contracts for public improvements; bonds; street surface railroads**—All contracts for any work or improvement described in the foregoing section shall be awarded by the board of contract and supply in the manner herein provided for and all the expense incurred for work, labor and services performed and materials furnished, with the incidental cost and expense attending the same for any of the improvements so authorized, except where such expense or portion thereof is made a city charge, shall be assessed upon the property intended to be benefited thereby, which is described by the officers and in the manner prescribed in the statutes applicable thereto which were in force in any city at the time of the taking effect of this act, and the procedure for the making, levying and confirming of the assessments, the collection and payment of the sums of money due thereon and the sale and redemption of the property assessed on account of the default of the owners thereof to make payment of the same within the time prescribed by law, shall be regulated and governed by the laws in existence and applicable thereto in each

of the cities respectively at the time of the passage of this act except as otherwise provided herein. All laws authorizing the issuing of bonds or certificates of indebtedness to contractors during the progress of any such work or improvement and prescribing the proceedings in regard thereto and the restrictions under which the same shall be issued, are hereby continued in full force and effect in the respective cities to which the same are now applicable, and the several officers designated in and by this act to exercise the general powers and discharge the general duties heretofore exercised and discharged by the corresponding officers named in said several acts referred to are hereby charged with the performance of all the acts necessary to be performed in the making, levying and collection of such assessments, the sale and redemption of said property and the issuance of such certificates of indebtedness. Nothing contained in this act shall be construed as relieving any street surface railroad company from its obligations or agreements under existing contracts, ordinances or laws to pay any portion of the expense of paving or repairing any street or part thereof, or the making of any other improvement in the city. (*Amended L.* 1899, *Ch.* 581; *L.* 1900, *Ch.* 415).

When money may be paid on contracts for local improvements — Kronsbein vs. City of Rochester, 76 App. Div. 404.

Property beyond the territory benefited cannot be assessed for sewer — People vs. Brooklyn, 23 Barb. 166.

Street surface railroads shall keep in permanent repair street between tracks and for space two feet outside rails — Railroad Law, § 98. Conway vs. City of Rochester, 157 N. Y. 33.

§ 148. **Expense of street improvement**—The expense of opening or altering a street shall be borne wholly by the property benefited thereby, except in the cases provided for by section thirty-four of this act, which expense shall be assessed and apportioned by the officers upon the property described and in the manner prescribed in the statutes applicable thereto which were in force in any city at the time of the taking effect of this act. (*Amended L.* 1899, *Ch.* 581).

Street improvements generally—See Index.

White Charter

§ 149. **City may acquire real estate**—Whenever the common council shall direct the opening and laying out of a new street or the alteration of an existing street, or whenever any real estate or interest therein shall be required for any municipal purpose whatever, the commissioner of public works may acquire for the city the necessary land and real estate by gift or by purchase at a price approved by the board of estimate and apportionment or by condemnation proceedings conducted under the laws prescribing the method of procedure of acquiring title to real estate by the right of eminent domain in force in the several cities respectively at the time of the taking effect of this act. (*Amended L.* 1899, *Ch.* 581).

Power to acquire by condemnation—General Municipal Law, § 22.
Condemnation proceedings—Code Civil Proc., §§ 3357–3382.
See § 169 Old Charter, p. 50 this book.

Note—§§ 150, 151, 161, 162, 163 and 164, White Charter, were repealed by L. 1899, Ch. 581.

Note—§§ 152–160, inclusive, omitted from the White Charter as first enacted.

Old Charter

§ 61. **Duties of street superintendent**—It shall be the duty of the superintendent of streets to superintend, under the direction of the executive board, all work to be done or ordered upon or in relation to any of the public streets, parks, walks, bridges, sewers, pumps or reservoirs of said city, and to perform, under the direction of said board, such other duties as are by law imposed upon him. If no superintendent of streets shall be appointed, then all powers and duties by this charter imposed upon him shall belong to, and be performed by, the executive board of said city. (*L.* 1880, *Ch.* 141.

§ 149. **Improvement of streets; street superintendent**—The executive board shall have sole power to let all contracts to be made

by said city in pursuance of any ordinance, except such as are by law directed to be otherwise made, and shall superintend the execution of the same, and shall have the superintendence and control of all work or improvements ordered by the common council, and shall have control of the construction, improvement, repair and cleaning of streets, alleys, sewers and bridges, except bridges owned by the state of New York, and shall have control of the expenditure of the funds therefor; but whenever the expense of any such work or improvement shall be required to be defrayed by a local assessment the common council of said city shall alone have power to pass any ordinance therefor. The members of the said board shall give their entire time to the duties of the office, and they shall be the commissioners of highways of the said city. The executive board may appoint, and at pleasure remove, a superintendent of streets, fix his compensation and prescribe his duties. (*L.* 1880, *Ch.* 140.

§ 150. **Water works; water meters; actions for penalties**—The executive board shall have control of the water works of said city, and of the construction of all extensions and additions, improvements and repairs of the same, and of furnishing the water to citizens, and the care and repair of said works, and to the end shall have the powers granted to the board of water commissioners of said city by section three of chapter seven hundred and fifty-four of the laws of eighteen hundred and seventy-three, and they may make such rules and regulations and establish such rates for the use of water as they may deem proper. All moneys received for water rates or the use of water, shall, at the close of each day, be paid to the city treasurer. Whenever any meter for registering the use or consumption of water is, or may be, placed in any building or other place where such water is used or consumed by

or under the direction of the said executive board, the same shall at the cost and expense of the owner of such building or place, as well as the tenant or occupant of the same, or other person using or consuming said water, be at all times kept and protected from any injury caused by reason of any act or thing, including the action of frost, and in case any such meter shall be injured while being at the place where the same is deposited by the order of the said executive board, or its agents, the cost and expenses of repairing or replacing the same shall be borne and paid by such owner, and tenant, occupant or other person, to be recovered by suit in the name of, and for the city of Rochester. Any action or proceeding taken or instituted by said executive board to recover any penalty, or enforce any liability, claim or demand under any of the provisions of this act, or any of the rules and regulations of said board, adopted under the power granted by this act, may be brought in the name of said executive board, as such, or in the name of the city of Rochester. [As amended L. 1889, ch. 561].

§ 156. **Power to purchase property for water works**—The executive board, with the concurrence of the common council, may purchase, and take title to the city, of any property or real estate within or without the city limits, which they may deem necessary or desirable for the protection or improvement of the water works. [L. 1880, ch. 145].

§ 157. **Power of commissioner of public works over streets and the extension of water works**—The commissioner of public works of the city of Rochester, or his successor in office, may enter upon any road, street, bridge, highway or public square in said city for the purpose of laying down pipes for the conveyance of water, or constructing, repairing, altering, maintaining or extending any

portion of the water works of said city, and may, for said purpose, carry, conduct and maintain any aqueduct, pipes, or other work by them to be made, laid down or conducted, over, under, through or across any water-course, canal, street, bridge, railroad, highway or public square, in such a manner as not to obstruct travel or the free use thereof, only so far as may be necessary during the actual construction of work; provided, also, that such water-course, canal, street, railroad, highway or public square so entered upon shall be restored by them in as good condition as before. No other person or corporation shall enter upon or excavate any road, street, highway or public place in the city of Rochester, for the purpose of laying down pipes for the conveyance of water, without the permission of the common council, which body may deny any such application in its discretion. No person or corporation shall furnish or distribute water within said city of Rochester from pipes, mains or conduits except under a franchise granted by an ordinance passed by a three-fourths vote of all the members of the common council, approved by the board of estimate and apportionment and providing for a disposition of such franchise for an adequate consideration for a period not exceeding twenty-five years, and upon such terms and conditions as said common council may impose. (*Amended L.* 1903, *Ch.* 50; *last amended L.* 1903, *Ch.* 553).

Any right, license or permission to any person or corporation, other than the city of Rochester, to enter upon and lay pipes for the conveyance of water in the public streets and highways of the city of Rochester, or to furnish and distribute water within said city, accruing, accrued or acquired under and pursuant to any previous act of the legislature, or part of such act, is hereby repealed and revoked. (*L.* 1903, *Ch.* 553, § 2).

A private company can lay pipes in city streets under Transportation Corporations Law—Rochester and Lake Ontario Water Company vs. City of Rochester, 84 App. Div. 71; affirmed, 176 N. Y. 36.

§ 158. **Power to fix water rates and enforce collection with penalties; deposit and use of same**—It shall be the duty of the said board, or their successors in office, and authority is hereby given them, to fix and adjust, from time to time, in an equitable manner, the prices and rates which shall be paid to said city for the use and consumption of water supplied by water works and to collect and receive the amounts which shall become due for the same, and establish such needful regulations as shall enable them to enforce collections of said water rates, if not paid when due, and also such other regulations as they may deem necessary for the management, maintenance or protection of said water works, and to sue for and collect any and all penalties which may be imposed for violation of such regulations, provided that no penalty exceeding two hundred dollars shall be imposed for any violation. The proceeds of the water rates, in whatsoever manner collected for the use and consumption of said water, and all penalties collected shall be deposited with the treasurer of said city, and be reserved and used exclusively for the payment of operating expenses, salaries, repairs, maintenance or extension of said works, of the interest upon the water bonds issued for construction of said works, or for further extension of the same, or for a sinking fund for payment of principal of said water bonds, but for no other purpose whatever. (*L.* 1888, *Ch.* 141.

§ 159. **Interference with water works property and supply a misdemeanor**—Any person who shall willfully do, or cause to be done, any act whereby any work, materials, or property whatsoever, erected or used by the city of Rochester, for or in connection with the water works of said city, shall be impaired

or injured, or shall divert, draw down or diminish the waters of Hemlock or Canadice lakes without authority of law, or shall in any way interrupt or prevent the flow of water through the water mains, pipes, or service of said works, or shall throw, deposit, place, cast, pass or cause to be passed, cast, placed, deposited or thrown into the waters of said Hemlock or Canadice lakes, or into any reservoir, conduit, aqueduct or pipe belonging to said works, any dead animal, ordure or deleterious, offensive, filthy, impure or obstructing matter, thing or liquid, or who shall place any of said described matter, thing or liquid so that the same may be washed or carried or flow into either of said lakes or any conduit, pipes, or aqueducts supplied with water therefrom, shall be liable to prosecution for misdemeanor, and on conviction shall be punished by fine of not exceeding two hundred dollars, or imprisonment of not exceeding one year, or both. (*L.* 1880, *Ch.* 14).

§ 160. **Tapping water pipes and letting water run a misdemeanor**—Any person who shall, without the consent of the executive board, its authorized agents or successors in office, tap, open or connect with any water-pipe, or open any hydrant, valve or stop-cock connected with said water works, or make any extension of existing service pipes, whereby increased quantities of water are or may be used, without said consent, or shall leave open any valve, faucet, stop-cock or other fixture for continuous flow of and through which there shall be continuous flow beyond what may be necessary for actual use, or the purposes required in connection with such hydrant, valve, faucet, stop-cock or other fixture, shall be liable to the city of Rochester in a penalty not exceeding two hundred dollars, which penalty the executive board or its successors in office for and in behalf of the city of Rochester may sue for and collect in a civil action. The said

acts or any of them are hereby also declared to be a misdemeanor, and the person so offending may be prosecuted therefor, and on conviction shall be punished by a fine of not exceeding two hundred dollars, or imprisonment of not exceeding one year, or both; but the penalty in a civil action and also in a criminal action shall not be enforced for the same offense. (*As amended L.* 1884, *Ch.* 302).

§ 161. **Statement of unpaid water rates**—It shall be the duty of said board on or before the first day of March in each year to make and deliver to the assessors of said city a complete statement of each and all unpaid water rates, with a description of the lot, building or real estate, and the name of the owner thereof where water has been used, for which water rates are and remain due and unpaid; whereupon the said water rates and the amount thereof together with ten per centum interest from the date when they were due, shall become a lien and tax upon said lot, building, or real estate, in the same manner as other city taxes, and shall be collected in the same manner as is or may be prescribed by law for the collection of taxes for city purposes of the city of Rochester. (*As amended L.* 1896, *Ch.* 777).

§ 162. **City may acquire property for water works**—In case the city of Rochester is unable to obtain by purchase the title to any lands, waters, lakes, springs, ponds, or streams, or any easements in, or right of temporary occupation of such lands, waters, lakes, springs, ponds or streams, which may be necessary for the use of the water works of said city, or of dumping rubbish and dirt, the executive board of said city shall be and hereby is authorized, by and with consent of the common council, to proceed to acquire such title or other rights in and to such lands, waters and property, for and in behalf of said city, in the manner pre-

scribed by the condemnation law, as heretofore amended, except as may be otherwise provided by law, and for that purpose all the provisions of the last mentioned act, and of the acts amendatory thereof, are hereby made applicable to proceedings under this act. And in case the said city of Rochester shall seek to acquire any lands or any easements, water or other right or privilege in, or connected with, any lands which shall belong to any corporation having the right of taking private property for a public use, commissioners of appraisal shall not be appointed, unless it shall appear to the court that the title, right, interest, water right, easement or privilege so sought to be acquired, does not embrace any of the special corporate rights, privileges or franchises granted to the corporation owning such lands or other rights, nor anything which is essential to the exercise and enjoyment of such corporate rights and privileges. And in case commissioners are appointed by the court, the city of Rochester shall acquire no greater or other rights by the proceedings than it would have acquired if the property, right or privilege sought had belonged to a private individual, and in the estimate of damages made by such commissioners of appraisal, nothing shall be included for any corporate right, interest, privilege or franchise of that corporation owning the property to be taken, but the same shall be estimated precisely as if the property belonged to some private individual. Any condemnation proceedings heretofore commenced under the act authorizing the formation of railroad corporations shall not be affected by this amendment, making the condemnation law applicable, but shall be completed pursuant to the provisions of the statute under which they were begun the same as if this amendment had not been passed. (*As amended L.* 1897. *Ch.* 784).

§ 164. **Proceedings in case of encroachments on streets** — In every case

where a street in said city has been or shall be encroached upon by any fence, building or otherwise the executive board may cause the same to be surveyed and the extent of such encroachment ascertained and may, by resolution, specifying the nature of such encroachment and the extent thereof, require the owner or owners, if known, and if unknown, the occupant or occupants of the premises so encroaching or adjoining such encroachment, to remove the same within such time as shall be specified in such resolution, which time shall not be less than ten days from the service of such resolution as hereinafter provided. A copy of such resolution shall be served on the owner or owners of the premises so encroaching or adjoining such encroachment, if he or they live in said city, personally or by leaving a copy of such resolution at his or their residence with some person of suitable age and discretion; if such owner or owners do not live in said city, but have an agent living in said city, whose appointment is in writing and whose name is entered in a book to be kept by the city clerk for that purpose, then a copy of such resolution shall be served on such agent personally, or at his residence, by leaving the same with some person of suitable age and discretion; if such non-resident owner does not have such an agent then a copy of such resolution may be served on any tenant in possession of said premises, and a copy thereof shall also be sent by mail addressed to such owner or owners at his or their residence, if the same is known or can be ascertained with reasonable diligence; and if there be no such tenant, service by mail alone, as aforesaid, shall be sufficient; if there be no tenant in possession and the owner or owners of such lands, or his or their residence be unknown and can not be ascertained with reasonable diligence, then such service may be made by posting a copy of such resolution in a conspicuous place upon the premises encroaching or

adjoining such encroachment. The service aforesaid shall be made by such person as said board may direct. If such removal shall not be made within the time specified in such resolution the owner or occupants of said premises shall forfeit and pay to said city the sum of five dollars for each and every day that such encroachment shall continue unremoved after the time mentioned in said resolution for removing the same. And the said board may remove, or cause to be removed such encroachments, and may collect of such owner or occupant all reasonable charges therefor, with costs, in any court having jurisdiction of civil actions, and upon a judgment rendered in such action execution may issue against the person of the defendant in said action. No encroachment upon any street, alley, or lane of said city, however long continued, shall constitute an adverse possession to or confer any rights upon the person or persons claiming thereunder as against said city. This section and the last preceding section shall apply to alleys as well as streets. (*As amended L.* 1894, *Ch.* 281).

Removal of unauthorized encroachments cannot be enjoined—Sims vs. Brookfield, 13 Misc. 561.

§ 165. **Practice when issue raised on encroachment**—If any person upon whom a copy of such resolution shall have been served shall, within five days after such service, file with the clerk of said city, a notice that he or they deny such encroachment, the mayor or attorney of said city may apply to the county judge of Monroe county for a precept directed to the sheriff of said county commanding him to summon twenty-four freeholders of said city, to be named in said precept, to meet at a certain day and place specified therein, not less than two days after the issuing thereof, to inquire into the premises. The said mayor or attorney shall give the person or persons denying such encroachment at least twenty-four

hours notice of the time and place at which such freeholders are to meet. On the day and at the place specified in such precept a jury of twelve persons shall be drawn by said judge from those so summoned, and who shall appear, which jury shall be sworn by said judge well and truly to inquire whether any such encroachment has been made, to what extent, and by whom. Said county judge shall preside at such investigation, and shall decide all questions of law that may arise upon the evidence offered by either party thereto, and may give instructions to the jury as to the law of the case, as in civil actions. The jury shall hear the proofs and allegations that may be submitted by either party. If they shall find that any encroachment has been made, they shall make and subscribe a certificate in writing stating the particulars of such encroachment, and by whom made, which shall be filed by said judge, with a brief record of the proceedings made and subscribed by him, in the office of the clerk of said city. The person or persons so denying such encroachment, within ten days after the finding of such jury, that there is an encroachment, shall, under the penalty provided in the next preceding section, remove the same, or in case of neglect so to do, the executive board, or the superintendent of streets, may proceed to remove the same and collect the charge therefor in the manner provided in the next preceding section. If the jury find that no encroachment has been made they shall so certify. (*L.* 1880, *Ch.* 14).

§ 166. **Fees and costs of such issue** The persons summoned as jurors, and the persons summoned and attending as witnesses, shall be entitled to the same fees as jurors and witnesses summoned to attend courts of record in this state. The party prevailing in such proceeding shall recover costs as against the other, which costs shall be ascertained and certified by the said judge, and collected by a

warrant issued by him to the sheriff of the county of Monroe, commanding him to collect the same of the goods and chattels of the party against whom such warrant shall issue. Such costs shall consist of the sheriff's, jurors' and witnesses' fees, and such an amount as the said judge shall allow for attorney's fees, not exceeding twenty dollars. (*L.* 1880, *Ch.* 14).

§ 167. **Review of proceeding by certiorari in supreme court; practice; costs** —Any determination in the proceeding instituted by virtue of the foregoing sections may be removed to the supreme court by the party aggrieved thereby, by certiorari to be allowed by any judge of the supreme court, within thirty days from such determination, but such certiorari in favor of any owner or occupant shall not be allowed in favor of any owner or occupant, unless the party suing out the same shall execute, with two sureties, to be approved by the judge allowing such certiorari, an undertaking conditioned to pay all costs and damages against him on such certiorari, which undertaking shall be filed with the Monroe county clerk. The allowance of such certiorari, and the giving and filing of such undertakings shall stay all proceedings under and by virtue of such determination from and after notice thereof to the mayor of said city. The return to such certiorari shall be made by said county judge, and the same shall be entitled to a preference over other cases on the calendar at any general term of the seventh judicial district. The court, upon the hearing of the same, may review any determination made by the said judge during such proceeding, and the correctness of the finding of such jury. Costs may be allowed as in other cases of certiorari. (*L.* 1880, *Ch.* 14).

§ 168. **Power of common council as to improvements**—The common council shall have the power, subject to the restrictions and limitations hereinafter contained:

1. CONSTRUCTION OF SEWERS—To make or cause to be made sewers, tunnels, drains and vaults, arches and bridges, wells, pumps and reservoirs in any part of the city, and also whenever for the purpose of drainage, sewerage, or to promote the public health, it shall deem and declare it necessary, to extend said sewers, tunnels, drains, vaults and arches to and beyond the limits of said city, and across private lands or highways in any adjoining towns; and to acquire the necessary lands, rights or easements therefor and make such ordinances for the regulation, protection and preservation of the same as may be deemed advisable. (*As amended L.* 1897, *Ch.* 784).

Property beyond the territory benefited cannot be assessed for sewer—People vs. Brooklyn, 23 Barb. 166.

2. CONSTRUCTION OF STREETS, ETC.—To cause the grading, repairing, cleaning, macadamizing, planking or paving any of the streets, alleys, lanes, squares or walks in the said city, and the fencing of the public squares. (*L.* 1880, *Ch.* 141.

3. OPENING OF STREETS, ETC.—To lay out, make and open any street, alley, square, park or walk in the said city, and to cause any street, alley, square, park or walk already laid out, or that may hereafter be laid out or used as such, to be opened or altered by widening or altering the course of the same, whenever they shall judge the public good requires the same to be done. (*L.* 1880, *Ch.* 141.

Improvement ordinances discussed generally—Elwood vs. City, 43 Hun 192.

See White Charter, §§ 125, 148, this book, *ante*.

4. DISCONTINUANCE OF STREETS—The executive board, whenever authorized by the

common council, shall have the same power with respect to said city, to discontinue any street therein, as is now by law possessed by commissioners of highways of towns, with respect to roads in towns; and the same proceedings shall be had, and the same appeal shall lie, from the decision of the said executive board, and the same proceedings shall be had on such appeal, as are now provided by law in reference to towns, so far as applicable. (*L.* 1880, *Ch.* 14).

City cannot close street without making compensation—Egerer vs. N.Y.C. etc., 41 St. Rep. 488.

See White Charter, § 143, this book, *ante*.

5. REMOVAL OF DEPOSITS IN GENESEE RIVER; PROCEEDINGS—The common council shall also have power, from time to time, and at any time, to cause all or any accumulations of dirt, rubbish and deposits in any portion of the Genesee river, within the limits of said city, to be removed therefrom; and may defray the expense thereof, in whole or in part, by assessment upon such lots and parcels of land in the said city as the common council may deem proper to be assessed therefor. The proceedings in such case shall be the same as are hereinafter provided in relation to public improvements the expense whereof is defrayed by local assessments, and the same proceedings shall be had after the delivery of the certified order of assessment, as are prescribed in relation to assessments for any such public improvement, and in relation to the collection and enforcement of the same, and the lien thereof, and the sale of land for such assessments as may remain unpaid, and in relation to re-assessment for any deficiency in the estimated expense. (*L.* 1880, *Ch.* 14).

6. CONTRACTORS' BONDS FOR LABOR; ACTIONS THEREON—Whenever any contract shall be let for any public or local improvement, the contractor shall execute to the city of

Rochester a bond or undertaking, in the sum of not less than the amount of the contract, or to be fixed by the executive board in case the amount be indefinite, with three or more sureties, who shall be freeholders of the state of New York, each of whom shall, before being accepted, make oath and justify that he is worth the sum named in said bond or undertaking, over and above all debts and liabilities, which he owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution. Or, if the said amount shall exceed ten thousand dollars, each surety may so justify to any amount not less than five thousand dollars, provided the aggregate of the amount for which the sureties so justify severally shall be, at least, the amount of the contract, such bond or undertaking, before being accepted, shall be approved as to form, and the sureties thereof by the said executive board or one of the members or clerk of said board duly authorized by said board; and no contract shall be binding on the city until a bond or undertaking, so executed and approved, shall be deposited with the said executive board or its clerk, to be safely kept in the office of said executive board for the benefit of the parties secured thereby. Such bond or undertaking shall bind the contractor to pay, or cause to be paid, the wages and compensation of all laborers who shall be employed in work on or about such improvement, whether employed by him or any sub-contractor, or employee. Actions and proceedings on such bonds or undertakings shall be brought by and in the name of the laborer or laborers claiming to be secured thereby, and separate actions may be brought by each, or any number united of such laborers, or one action by all; but the city shall not, in any manner, be liable or responsible, by reason of such bond or undertaking, or for any costs or expenses of any action or proceedings thereon. No action shall be commenced on such bond or undertaking after six months from the

time when the cause of action accrued and after the expiration of six months from the time when the whole work contracted shall be accepted by the city, the said board, on application, shall, by resolution, declare such bond or undertaking canceled and discharged, except as to actions, appeals and proceedings then pending; and such bond or undertaking shall, thereupon cease to have any binding force or effect, except as to pending cases, as aforesaid. (*As amended L.* 1892, *Ch.* 190).

Guarantors and sureties—See L. 1881, Ch. 480; L. 1893, Ch. 720, as amended L. 1895, Ch. 178; Matter of Filer, XI Abbott's New Cases 107.

§ 7. **Sprinkling of streets**—The common council are hereby authorized to cause the whole, or any part of any street in said city to be sprinkled with water, or cleaned, and may pay the expense thereof by an assessment upon the lots and parcels of land fronting on such streets, or any specified part thereof (in proportion to the benefit and advantage thereby derived). The proceedings of the said common council in relation to such work and for the assessment and collection of the expenses thereof shall be conformed as nearly as may be to proceedings in relation to the making of local improvements, and collecting the expense thereof (as now required from the persons owning or occupying the lots to be assessed). (*Amended L.* 1881, *Ch.* 343; *L.* 1896, *Ch.* 561).

ARTICLE VI

DEPARTMENT OF PUBLIC SAFETY

§ 174. **Commissioner of public safety and chief of police; bonds thereof**—There shall be a commissioner of public safety appointed by the mayor within ten days after the beginning of every mayoralty term. He shall have charge of and supervision over the police department and shall hold office for two years unless sooner removed by the mayor. The commissioner shall appoint, when a vacancy shall occur, a chief of police, to hold office during good behavior, or until he becomes permanently incapacitated or unfit to discharge his duties; and such other subordinates to hold office during his pleasure as may be prescribed by the board of estimate and apportionment. In case of a vacancy in the office of commissioner of public safety, the mayor shall, within ten days, fill the vacancy by appointment for the remainder of the term. The commissioner of public safety and the chief of police shall each give a bond to the city, with sureties, for the faithful discharge of the duties of their respective offices, in a penalty to be prescribed by the common council, which bond, as to its form and the sureties thereto, shall be approved by the mayor. (*As amended L.* 1899, *Ch.* 581).

Oath of office—Public Officers Law, § 10; failure to take oath, Penal Code, §§ 42, 43; effect on official acts of failure to take oath, Public Officers Law, § 15.

Official bonds generally—Public Officers Law, §§ 11-13; acting without filing bond, Penal Code, §§ 42, 43; and Public Officers Law, § 15. Guaranty and Sureties, L. 1881, Ch. 480; L. 1893, Ch. [illegible], as amended L. 1895, Ch. [illegible].

§ 175. **Clerk and records of commissioner of public safety**—The commissioner shall appoint a clerk, to hold office during

his pleasure. It shall be the duty of the clerk to attend to the office of the commissioner and keep, under his direction, all the records and papers relating to the police department; and the clerk shall have authority to administer oaths and take affidavits in all matters and proceedings pertaining to the department. The commissioner shall also cause a record to be kept of all his official acts, which must at all times be open to the inspection of the mayor, and, so far as compatible with the public interests, also, at all proper times, to the inspection of any resident of the city. (*L.* 1898, *Ch.* 182).

§ 176. **Rules for the police department**—The commissioner shall make rules and regulations, not inconsistent with the provisions of this act, the other laws of the state or the ordinances of the common council, for the government, direction, management and discipline of the police force. (*L.* 1898, *Ch.* 182).

"Rules governing the Rochester police department," last revised and published Jan. 1903.

§ 177. **Police force subject to grading of common council**—The police force shall, as to its component parts, remain in each city as now constituted until the same shall be changed by the action of the common council thereof, which has power, at all times, by ordinance, to determine the number of the members of the police department, and the classes or grades into which they shall be divided; but the number of members of the police department shall not be increased without the approval of the board of estimate and apportionment by a resolution adopted by at least four affirmative votes of said board. (*L.* 1898, *Ch.* 182).

Power of common council to abolish police positions under § 177, White charter. People ex rel. Dunn vs. Ham, 166 N. Y. 477 (1901); reversing 57 App. Div. 367.

§ 178. **Appointment of policemen**—The commissioner has authority to appoint, as vacancies in the police force occur, or as the ordinances of the common council may require, all the members of the

police force, and at all times to classify and distribute them into grades to conform to such ordinances; and under such ordinances he may appoint and assign to duty temporary or special members of the police force for such time of service and upon such terms and conditions as such ordinances may specify, and with the same powers as the regular members of the police force, except as limited in such ordinances. (*L.* 1898, *Ch.* 182).

Appointment of police matrons—General City Law, §§ 90–97, inclusive.

§ 179. **Qualifications of policemen**—No person shall be appointed to membership in the police force of the city, or continue to hold membership therein, who is not a citizen of the United States, who is not of good moral character, who has ever been convicted of any crime, who cannot understandingly read and write the English language, or who shall not have resided in the city during two years next preceding his appointment. (*L.* 1898, *Ch.* 182).

§ 180. **Tenure of office of policemen**—All the members of the police force, subject to the power of removal hereinafter specified, shall hold their respective offices during good behavior, or until by age or disease they become permanently incapacitated to discharge their duties. (*L.* 1898, *Ch.* 182).

§ 181. **Duties of policemen**—The members of the police force, excepting the surgeons, in criminal matters, have all the powers of constables under the general laws of the state; and they also have power and it is their duty to arrest any person by them found violating any of the penal ordinances of the city or laws of the state, and to take such person before the proper city magistrate, to be dealt with in the same manner as if such person had been arrested upon a warrant theretofore duly issued by such magistrate. It shall be their duty to report violations of law and ordinances, coming to their knowledge in any way, under regulations to be made by the commissioner to give

effect to this provision. They shall also have in every part of the state in criminal matters all the powers of constables; and any warrant for search or arrest issued by any magistrate of the state may be executed by them in any part of the state, according to the tenor thereof, without indorsement, and all the provisions of sections seven, eight and nine of chapter two, title two, part four of the revised statutes apply to the cases of arrests made as herein authorized. (*L.* 1898, *Ch.* 182).

NOTE—The sections of the R. S. referred to were repealed by L. 1886, Ch. 573. They related to the giving of bail. The reference should probably be considered to the provisions of the code of criminal procedure on that subject.

§ 182. **Warrants to be served by policemen**—All criminal process for any offense committed within the city, and all process to recover or to enforce any penalty for the violation of any city ordinance issued out of any court or by any magistrate within the city, and every process, subpœna or bench warrant issued by the district attorney of the county in which the city is situated, relating to any offense within the city, and every process, subpœna or warrant issued by any coroner of such county in any inquest held in the city relative to the death of any person, may be served by the members of the police force. (*L.* 1898, *Ch.* 182).

§ 183. **Powers and duties of chief of police**—The chief of the police department has power and it is his duty to see that all rules and regulations of the commissioner are enforced and carried out, to commit any person charged with a criminal offense until an examination shall be had before the proper magistrate; and he is empowered to administer oaths and to take affidavits in all matters pertaining to his duties under this act, or relating to the police department, and to perform such other duties not inconsistent with the provisions of this act as may be delegated to him by the commissioner. (*L.* 1898, *Ch.* 182).

§ 184. **Charges and trials of policemen**—If a charge be made by any person against any member of the police force, that he is incompetent, or has been guilty of neglect of duty, misconduct in his office, or of conduct unbecoming a police officer, the charge must be put in writing, in the form required by the rules of the police department, and a copy thereof must be served upon the accused officer. It is then the duty of the commissioner to hear, try and determine the charge according to the rules of the police department. The accused officer has the right to be present at his trial and be heard in person, and by counsel, and give and furnish evidence in his defense. All trials shall be open to the public. The commissioner has power to issue subpoenas attested in his name to compel the attendance of witnesses upon any proceeding authorized by the rules and regulations of the police department, and any person duly served with a subpoena is bound to attend in obedience to the command thereof; and the commissioner has the same authority to enforce obedience to the subpoena, and to punish for disobedience thereof, as is possessed by justices of the peace in like cases. If the accused officer shall be found guilty of the charge made against him, the commissioner may order his suspension from pay for some definite time, or impose upon him a fine not exceeding fifty dollars, or reduce his grade, or dismiss him from the police force or subject him to any other discipline prescribed in the rules of the police department which is not inconsistent with the provisions of this act, or with other laws of the state. The decision of the commissioner shall be final and conclusive and not subject to review by any court. (Z. 1898, Ch. 182.)

Decision removing policemen not reviewable—People ex rel. Guarneline vs. Ham, 30 App. Div. 314; People ex rel. Miller vs. Park, 73 App. Div.

Commissioner can hear charges of misconduct occurring before Jan. 1st, 1900—People ex rel. Spain vs. Coyle, 35 App. Div. 333.

§ 185. **Police pension fund**—Any police pension fund now existing in any city, or any such fund which shall hereafter be created or existing fund increased or extended under the rules and regulations

of the police department and ordinances of common council and with the approval of all the members of the board of estimate and apportionment, shall be maintained, managed, and controlled by the comptroller of the city, under the rules and regulations prescribed by the city ordinances, and he shall be the trustee of the fund for the purposes of its creation; and the rights of all persons in any such fund now existing shall remain unimpaired by this act. (*As amended L.* 1899, *Ch.* 581).

Act to establish a police pension fund—L. 1887, Ch. 614; amended L. 1889, Ch. 401; L. 1894, Ch. 501; L. 1901, Ch. 721; L. 1903, Ch. 382. Published in full in this volume, *post*. See Index.

§ 186. **Powers of mayor over police force**—The mayor, being charged to take care that the laws of the state and the ordinances of the common council and of the commissioner in charge of the health department be duly executed within the city, is empowered to control and direct the police department for this purpose; and in case of riot or insurrection, he may take command of the whole police force, including the chief executive officer thereof, and he may, for the occasion, appoint and commission as many special policemen as he may deem necessary, who shall have all the powers of regular members of the police force. (*L.* 1898, *Ch.* 182).

Mayor shall not appoint as special police any persons not citizens—Penal Code, § 119; as amended L. 1882, Ch. 384, and L. 1892, Ch. 272.

§ 187. **Police exempt from military and jury duty**—No member of the police department is liable to military or jury duty, or to arrest on civil process, or to service of subpœna from civil courts, while actually on duty, nor shall he hold any other office or be employed in any other department of the city government. (*L.* 1898, *Ch.* 182).

Exemption from military duty—Military Code, § 1, subdiv. 4.

§ 188. **Police appointments subject to civil service laws**—All appointments to membership on the police force shall be made pursuant to the civil service laws of the state, and in case of any vacancy in the police force the same shall be filled from a list of persons eligible to appointment under such laws. (*L.* 1898, *Ch.* 182).

White Charter

§ 189. **Policemen not to be members of political conventions**—No officer or member of the police department shall be a member of or delegate to any political convention, nor shall he be present at any such convention except in the performance of duty relating to his position as such officer or member. Any violation of these provisions shall work a forfeiture of his office or position, and it shall be the duty of the mayor to dismiss him from his office or position, and enter of record the cause of such dismissal. (*L.* 1898, *Ch.* 182).

§ 190. **Policemen not to solicit votes**—It is unlawful for any officer or member of the police department to solicit any person to vote at any political caucus, primary or election for any candidate, or to challenge any voter, or in any manner to attempt to influence any voter at any political caucus, primary or at any election, or to be a member of any political committee; and any person violating the provisions of this section shall forfeit his position under the city government. (*L.* 1898, *Ch.* 182).

§ 191. **Common council may pass police ordinances**—In addition to the provisions herein contained, the common council may make any ordinances, not inconsistent with this act or the other laws of the state, for the government of the police department, and for regulating the powers and duties of its officers and members. (*L.* 1898, *Ch.* 182).

§ 192. **Policemen shall retain positions**—All officers and members of the police department, when this act takes effect, shall remain and continue in their respective positions until their positions shall become vacant by death, resignation or by removal under procedure hereinbefore set forth. (*L.* 1898, *Ch.* 182).

Note—§§ 193-200, inclusive, are omitted in White Charter as first enacted.

Police authorities must be notified of parades and processions—General City Law, § 4

White Charter

Police matrons in cities General City Law, §§ [illegible].

Mayor may issue certificates to policemen and firemen good for free use of street railway, telegraph and telephone, when on duty—L. 1895, Ch. 417.

Vacations of members of police department—L. 1895, Ch. 514. Published in full in this volume, *post*. See Index.

Carrying and using weapons in cities—Penal Code, §§ 410, 411 and 468. See also L. 1883, Ch. 375.

Commissioners shall have sufficient police at public meetings—Code of Crim. Proc., § 101.

Old Charter

The organization of the police department under the Old Charter is found L. 1880, Ch. 14, § 12, as amended L. 1881, Ch. 343; L. 1892, Ch. 190. Said § 12, Old Charter, contained eleven subdivisions and set forth the powers and duties of the old board of police commissioners, which is now superseded. Subdivisions 7, 9 and 10 of said § 12 are as follows:

7. SUSPENSION AND DISMISSAL OF POLICE—The mayor or any one of said commissioners, at any time, upon charges being preferred, or upon finding said chief or any other member of the police force guilty of misconduct, shall have power to suspend such member from service until the board of commissioners shall convene and take action in the matter; provided, however, that such member shall not remain so suspended for a longer period than thirty days without an opportunity of being heard in his defense; and upon hearing the proofs in the case a majority of such commissioners may discharge or restore such members in accordance with the decision of the majority of such board thereon; and the pay or salary of any member shall cease from the time of suspension to the time of restoration to service, unless otherwise ordered by said board of commissioners in their written decision.

which shall be filed with the clerk; and any violation of the rules, regulations or orders of the board, or orders of any superior, shall be good cause for dismissal. (*L.* 1880, *Ch.* 14).

9. Powers and duties of the police force—The said chief of police, police clerk and every policeman duly appointed as aforesaid shall have issued to him a warrant of appointment, signed by the president of the board and countersigned by the city clerk, and stating the date of his appointment, which shall be his commission, and he shall take the proper oath of office and subscribe the same in a book kept for that purpose, and he shall have the same power and authority and duties, and be subject to the same regulations and liabilities as a constable elected in a town, except that the said chief of police and policemen shall not receive nor execute any process in any civil action except the same be issued for a violation of penal ordinances of said city of Rochester. The said chief of police shall detail one policeman, to be selected by the district attorney of Monroe county, to attend upon each court of oyer and terminer and court of sessions held in and for Monroe county, and such policeman shall be designated, notified and returned by the sheriff of Monroe county to attend said courts, in the same manner in which constables are now designated, notified and returned by him to attend such courts, and shall be paid in the manner constables are paid by law for such service; but such policeman, during such detail, shall be subject to the orders of the district attorney of Monroe county only. The said chief of police and policemen shall, upon the request of the district attorney of Monroe county, serve any criminal process issued by him within the limits of the city of Rochester, and the fees allowed by law therefor shall be paid by the county of Monroe to the treasurer of the city of Rochester. (*L.* 188-, *Ch.* 14).

10. POWER TO ARREST; SPECIAL OFFICERS — The said chief and policemen shall have power and authority respectively to arrest any person or persons by them found violating any of the penal ordinances or laws of said city, and to take such person or persons before the police justice, or any justice of the peace of said city, to be dealt with in the same manner as if such person or persons had been arrested upon warrant theretofore duly issued by such justice; and it shall be the duty of such chief and policemen, respectively to enforce any and all of the penal ordinances and laws of said city of Rochester. The said chief of police shall, upon the request of the city clerk, detail one or more policemen, whose special duty it shall be to enforce the penal ordinances of said city, relating to all persons required to take out licenses, and to report, without delay, to the city attorney, for prosecution, all violations of said ordinances. (*L.* 1880, *Ch.* 14).

§ 70. **Duties of police force; penalty for refusal**—The chief of police and policemen of said city shall obey the lawful orders of the mayor, aldermen, and of the police justice, or of any person legally exercising the criminal jurisdiction of a justice of the peace in said city, in enforcing the laws of this state or the ordinances of said city; and in case of refusal or neglect so to do, he or they shall be subject to a penalty of not less than five dollars nor more than one hundred dollars. (*L.* 1880, *Ch.* 14).

§ 71. **Monroe county to pay expenses of punishing offenders against state law** — The expenses of apprehending, examining and committing offenders against any law of the state in said city, and of their confinement, shall be audited, allowed and paid by the supervisors of the county of Monroe, in the same manner as if such expenses had been incurred in any town of the said county, to be assessed on said city. (*L.* 1880, *Ch.* 14).

§ 201. **Powers of commissioner of public safety over fire department**—The commissioner of public safety shall have charge of and supervision over the fire department. (*L.* 1898, *Ch.* 182).

§ 202. **Fire department subject to grading of common council**—The fire department in each city shall, as to its component parts, except the head thereof, remain as now constituted until the same shall be changed by the action of the common council, which shall at all times have authority, by ordinance, to determine the number and grades of all officers and members of the department. (*L.* 1898, *Ch.* 182).

§ 203. **Appointment of chief and firemen**—The commissioner shall appoint, when a vacancy shall occur, a chief of the fire department, who shall hold office during good behavior, or until he becomes permanently incapacitated or unfit to discharge his duties, and such other subordinates, to hold office during his pleasure, as may be prescribed by the board of estimate and apportionment, and all the officers and members of the department as vacancies may occur or the ordinances of the common council require or determine; and all the officers and members of the department shall, except as hereinbefore specified, and subject to the power of removal hereinafter specified, hold their respective places during good behavior, and so long as they are competent to discharge the duties thereof, subject to the power of the common council to abolish any office or to diminish the number of members. It shall be the duty of the chief, subject to the direction and control of the commissioner, to perform such services as may be delegated or directed by the commissioner. (*Amended L.* 1899, *Ch.* 581).

§ 204. **Charges and trials of firemen**—Any officer or member of the department may be removed by the commissioner upon charges affecting his conduct or character or his competency or

capacity to discharge his duties, after a hearing upon such charges or an opportunity to be heard after notice thereof. The trial upon such charges shall be publicly conducted, according to rules and regulations adopted and promulgated by the commissioner; and for the purpose of such trials, the commissioner may issue subpœnas for witnesses and compel their attendance. In case an officer or member is found guilty upon charges affecting his conduct or character, instead of removing him, the commissioner may, in his discretion, suspend him from pay in the department for some definite time, or impose upon him a fine not exceeding fifty dollars. The decision of the commissioner shall be final and conclusive and not subject to review by any court. (*L.* 1898, *Ch.* 182).

§ 2-5. **Fire department pension fund.** Any pension fund for the benefit of members of the fire department now existing, or any such fund which shall hereafter be created, increased or extended by law and the rules and regulations of the department thereon, and under ordinances of the common council, and the approval of all the members of the board of estimate and apportionment, shall be maintained, managed and controlled by the city comptroller, pursuant to law, and to the rules and regulations of the department based thereon. He shall be the trustee of the fund for the purposes for which it was created; and the rights of all persons in any such pension fund now existing shall remain unimpaired by this act. (*As amended L.* 1899, *Ch.* 581).

Act to establish a pension fund for Rochester fire department. L. 1853, Ch. 234; amended L. 1875, Ch. 137; L. 1878, Ch. 160. Published in full in [illegible] volume, page [illegible]. See Index.

§ 2-6. **Commissioner of public safety shall control apparatus and property of fire department; contracts of over $500.** The commissioner has the control and management of all the

apparatus, property and buildings furnished for the department or appertaining thereto; and he has the general direction of the expenditure of all the money appropriated to the department, as herein provided. When the commissioner declares that any real property or building is needed for the department, requiring an expenditure of over five hundred dollars, he must report the facts concerning such need to the common council, which may by ordinance give authority for the purchase of the property, or the erection of the building by contract, to be let by the board of contract and supply, as heretofore provided, unless the common council and board of estimate and apportionment shall, by an unanimous vote, declare it impracticable to purchase the material or to do the work authorized in that way in which case the fire commissioner may make the purchase and do the work, using his own judgment. (*L.* 1898, *Ch.* 182).

§ 207. **Firemen shall retain positions.** All officers and members of the fire department, when this act takes effect, shall remain and continue in their respective positions until their positions shall become vacant by death, resignation, or by removal under the procedure hereinbefore set forth. (*L.* 1898, *Ch.* 182).

Note—§§ 208-210, inclusive, omitted as White Charter as first enacted.

Payment of tax by foreign fire insurance corporation—Insurance Law, §§ 133, 139.

Fire escapes must be provided—Domestic Corporation Law, § 40; Penal Code, § 447.

Chief shall inspect hotels as to fire escapes and report to mayor twice annually—Domestic Corporation Law, § 90.

Exemption of firemen from jury duty—Code Civil Procedure, § 1024, subdiv. 11; from military duty, Military Code, § 1, subdiv. 2.

Firemen moving from one city to another shall be entitled to certificate—General City Law, §§ 13-14.

Exemption certificates to be given to volunteer firemen—L. 1905, Ch. 442.

Act permitting membership in fire department of persons who have been convicted of felony—L. 1903, Ch. 427.

Old Charter

§ 224. **Purchase and sale of engine houses and fire department apparatus**—The executive board may procure, build, erect and keep in repair such and so many fire engines, hose and other apparatus, fire hooks and fire buckets and other implements and conveniences for the extinguishment of fires, and to prevent injuries by fire, and such and so many public cisterns, wells, reservoirs of water and engine houses as they shall, from time to time, judge necessary; provided, however, that no engine house or fire engine shall be brought, built, or sold without the authority of the common council. (*L.* 1880, *Ch.* 14).

§ 227. **Rules and regulations for the fire department**—The executive board may make rules and regulations for the government of said engineers and firemen; may prescribe their respective duties in case of fire or alarms of fire; may direct the dresses or badges of authority to be worn by them; may prescribe and regulate the time and manner of their exercise; and the common council may impose reasonable fines for the breach of any such regulations. (*L.* 1880, *Ch.* 14).

§ 228. **Engineers to have custody of engines, etc.**—The engineers, under the direction of the executive board, shall have the custody and general superintendence of the fire engines, engine houses, hooks, ladders, hose, public cisterns and other conveniences for the extinguishment and prevention of fires, and it shall be their duty to see that the same are kept in order, and to see that the laws and ordinances relative to the prevention and extinguishment of fires are duly executed, and to make detailed and particular reports of the state of their department, and of the conduct of the firemen, to the said board at stated periods, to be prescribed by the said board, and to make such reports to the mayor whenever required by him. The certificate of the

clerk of the city, under the seal of such city, that a person is or has been a fireman, shall be evidence of the fact in all courts and places. (*L.* 1880, *Ch.* 14).

§ 231. **Common council may compensate firemen for injuries**—The common council may provide suitable compensation for any injury that any fireman may receive, either in his person or property, in consequence of his exertions at any fire. (*L.* 1880, *Ch.* 14).

§ 232. **Powers of common council as to fires**—The common council may by ordinance :

1. POWERS AND DUTIES OF ENGINEERS—Prescribe the duties and powers of the engineers at fires, and in cases of alarms of fire, and may vest in them such powers as shall be deemed necessary to preserve property from being stolen, and to extinguish and prevent fires. (*L.* 1880, *Ch.* 14).

2. POWERS AND DUTIES OF MAYOR AND ALDERMEN—Prescribe the powers and duties of the mayor and aldermen at such fires, and in cases of alarm ; but in no case shall the mayor, or any alderman, control or direct the chief engineer, or his assistant, during any fire, except as hereinafter provided. (*L.* 1880, *Ch.* 14).

3. PROTECTION AGAINST IDLE, DISORDERLY AND SUSPICIOUS PERSONS—Provide for the removal and keeping away from such fires of all idle, disorderly or suspicious persons, and may confer powers for that purpose on the engineers. (*L.* 1880, *Ch.* 14).

4. COMPELLING ASSISTANCE—Provide for compelling persons to aid in the extinguishment of fires, by all proper means, and to aid in the preservation, removal and securing of property exposed to danger by fire. (*L.* 1880, *Ch.* 14).

5. COMPELLING POLICE OFFICERS TO BE PRESENT—To compel the constables and policemen of the city to be present at fires, and to perform such duties as the said common council shall prescribe. (*L.* 1880, *Ch.* 14).

§ 233. **Arrest of persons refusing assistance at fires**—Whenever any person shall refuse to obey any lawful order of any engineer, mayor or alderman, or member of the executive board, at any fire, it shall be lawful for the officer giving such order to arrest, or to direct orally a constable, policeman or any citizen, to arrest such person, and confine him temporarily in any safe place, until such fire shall be extinguished; and in the same manner, such officers, or any of them, may arrest or direct the arrest and confinement of any person at such fire who shall be intoxicated or disorderly. (*L.* 1880, *Ch.* 14).

§ 234. **Tearing down of buildings to check fires; damages, how appraised**—Whenever any building in the said city shall be on fire, it shall be the duty, and be lawful for the chief engineer, with the consent of the mayor, or of any member of the executive board, or of any alderman, or for the mayor, or for any two aldermen, or the executive board, to order and direct such building, or any other building which they may deem hazardous, and likely to communicate fire to other buildings, or any part of such building, to be pulled down and destroyed, and no action shall be maintained against any person or against the said city therefor. But any person interested in any such building so destroyed or injured may, within three months thereafter, apply to the common council to assess and pay the damages he has sustained. At the expiration of three months, if any such application shall have been made in writing, the common council shall either pay the said claimant such sum as shall be agreed upon by them and the said claimant for such damages, or if no such agree-

ment shall be effected, shall proceed to ascertain the amount of such damages, and shall provide for the appraisal, assessment, collection and payment of the same, in the same manner as is provided by this charter for the ascertainment, assessment, collection and payment of damages sustained by the taking of lands for purposes of public improvement. (*L.* 1880, *Ch.* 14).

§ 235. **Measure of such damages; satisfaction**—The commissioners appointed to appraise and assess the damages incurred by the said claimant by the pulling down or destruction of such building by the direction of the said officers of the city, as above provided, shall take into account the probability that the same would have been destroyed or injured by fire if it had not been so pulled down or destroyed, and may report that no damages should equitably be allowed to such claimant. Whenever a report shall be made and finally confirmed, in the said proceedings for appraising and assessing the damages, a compliance with the terms thereof by the common council shall be deemed a full satisfaction of all said damages of the said claimant. (*L.* 1880, *Ch.* 14).

§ 220. **Powers of commissioner of public safety over the health department**—The commissioner of public safety shall have charge of and supervision over the department of health. (*L.* 1868, *Ch.* 182).

§ 221. **Appointment of health officer; general powers of commissioner**—The commissioner of public safety shall appoint, within thirty days after his appointment, in the first instance, and thereafter when a vacancy shall occur, a health officer, who shall be a doctor of medicine duly licensed under the laws of this state to practice as a physician and surgeon, and who has had at least ten years practice as such. He shall hold his office during good behavior, or until

he becomes permanently incapacitated or unfit to discharge his duties. Every vacancy in such office shall be filled by the commissioner for the remainder of the term. The commissioner shall exercise all the powers and be charged with all the duties conferred upon or required of local boards of health by the laws of this state, so far as the same pertain to cities, with the exceptions, limitations and additions herein contained. (*As amended L.* 1899, *Ch.* 581).

This section in part supersedes Public Health Law, § 20. For powers of local boards generally see Public Health Law, §§ 20–32.

Obstructing health officer a misdemeanor—Penal Code, § 396.

Failure to comply with order of health officer—Penal Code, § 397.

§ 222. **Appeals from orders of health officer**—Any person aggrieved by an order, decision or direction of the health officer, may appeal therefrom to the commissioner, who may affirm, reverse, or modify the order, decision or direction appealed from. Such appeal must be made by serving on the health officer a written notice of appeal within two days, Sundays and legal holidays excepted, or within such further time as shall be allowed by the commissioner after the appellant receives notice of the order, decision or direction appealed from. Within two days after receiving such notice of appeal, Sundays and legal holidays excepted, the health officer shall make a written return to the commissioner of the facts and of the evidence on which such order, decision or direction is founded. Upon receipt of such return, or if no return be made within the time specified, the commissioner shall forthwith proceed to hear and determine the matter. Upon such appeal the commissioner need not be confined to the evidence contained in the return, but in his discretion may take additional evidence. Until the decision of the appeal be made, the order, decision or direction appealed from shall be suspended. In case of failure to sustain the appeal, the commissioner may, in his discretion, impose costs not exceeding ten dollars upon the appellant. (*L.* 1898, *Ch.* 182).

§ 223. **Health officers may appoint assistants and experts**—The health officer, by the authority and under the direction of the commissioner, may appoint a deputy and employ such experts in the sciences or arts relating to health, and employ such other persons as may be needed, and as the commissioner may authorize to assist him in the discharge of his duties and to carry into effect his decisions, orders and directions, and the powers vested in him by this act, subject to the approval of the board of estimate and apportionment. The deputy and experts, and other persons so employed, shall serve during the pleasure of the health officer and under his direction, and the direction of the commissioner, but their compensation shall be fixed by the commissioner, subject to the approval of the board of estimate and apportionment. (*As amended L.* 1899, *Ch.* 581).

Powers of deputies generally—Public Officers Law, § 9.

§ 224. **Inspection of public buildings**—The health officer has authority and it is his duty to make inspection and to advise as to the proper heating, ventilation and drainage of public buildings under the control of the city or any of its departments, and in case any such building is in use or in process of erection without, in the opinion of the health officer, proper arrangements for heating, ventilation or drainage, he has power, subject to the right of appeal herein provided, to stop the use or the erection of such building, to direct such arrangements to be made and to restrain further work upon the building until they are made. (*L.* 1898, *Ch.* 182).

§ 225. **Sewers and drains subject to approval of health officer**—All plans for sewers and drains shall be submitted to the health officer for his approval before contracts are let for the construction of the same, and in case of his refusal to approve the same such drains and sewers shall not be constructed unless, on appeal to the commissioner, he shall approve the same. The health officer has power, subject to the right of appeal herein provided, to stop the construction or use of drains and sewers which are not properly con-

structed or properly used, or which are not in accordance with plans previously approved and adopted. (*As amended L.* 1899, *Ch.* 581).

§ 226. **City divided into health districts** — The commissioner shall divide the city into not less than two nor more than seven districts, to be known as health districts, and shall file with the city clerk a written designation of such districts; and he may from time to time alter such districts by filing with the clerk a written designation of such alteration. (*L.* 1898, *Ch.* 182).

§ 227. **Appointment and duties of city health physician** — The commissioner shall appoint, to hold office during his pleasure, a health physician for each of such districts, who shall perform such duties as he may direct or prescribe. Their compensation shall be fixed by the commissioner subject to the approval of the board of estimate and apportionment. The deputy health officer and health physicians shall render medical services to indigent sick persons under the direction of the health officer and of the proper poor officers of the city; but no sick person shall be maintained at any institution at the expense of the city, unless the poor officer shall certify that such person is an indigent person and is a proper city charge. This section shall not be construed as applying to almshouses, hospitals or other public institutions which are provided with a regularly appointed medical and surgical staff. (*As amended L.* 1899, *Ch.* 581).

Obstructing health physician a misdemeanor — Penal Code, § 396.

§ 228. **Actions as to nuisances** — The commissioner is authorized, under the advice of the corporation counsel, in the name of the city, to maintain actions to restrain the threatened performance of any act contrary to its orders, directions, decisions or ordinances and to restrain and abate nuisances; and for the purpose of obtaining a temporary injunction in any such action no undertaking shall be required. (*L.* 1898, *Ch.* 182).

Suppression of nuisances— Public Health Law, §§ 25, 26; as amended L. 1903, Ch. 383.

§ 229. **Extraordinary health expenditures in time of peril**—In case of great and imminent peril to the public health of the city by reason of impending pestilence, it shall be the duty of the commissioner, with the sanction of the common council, if it be practicable, to convene that body for prompt action, or if not, when approved by the board of estimate and apportionment, to take such measures, and do, order, or cause to be done, such acts, and to make such extraordinary expenditures in excess of the sum appropriated to the department of health, as in this act provided, for the preservation and protection of the public health as he may deem necessary and proper. Such peril to public health shall be deemed to exist only when and for such period as the commissioner and the board of estimate and apportionment by unanimous vote shall determine. (*As amended L.* 1903, *Ch.* 408).

§ 230. **Charges and trials of members of health department**—Any officer or member of the department may be removed by the commissioner upon charges affecting his conduct or character or his competency or capacity to discharge his duties, after a hearing upon such charges or an opportunity to be heard after notice thereof. The trial upon such charges shall be conducted, according to rules and regulations adopted and promulgated by the commissioner; and for the purpose of such trials, the commissioner may issue subpœnas for witnesses and compel their attendance. In case an officer or member is found guilty upon charges affecting his conduct or character, instead of removing him, the commissioner may, in his discretion, suspend him from pay in the department for some definite time, or impose upon him a fine not exceeding fifty dollars. The decision of the commissioner shall be final and conclusive and not subject to review by any court. (*L.* 1898, *Ch.* 182).

§ 231. **Public health law in force**—The public health law, so far as it pertains to cities, shall be applicable to cities of the second class, except as herein expressly modified. (*L.* 1898, *Ch.* 182).

See Old Charter, § 280, this book, *post*.

White Charter

NOTE—§§ 232-237 omitted from White Charter as first enacted.

Provisions of public health law relating to powers and duties of local boards of health—Amended L. 1903, Ch. 383.

Legislature may confer power to enact sanitary ordinances—Polinski vs. People, 73 N. Y. 65; Cronin vs. People, 82 N. Y. 318.

Health bureau shall enforce law as to employment of women and children—Labor Law, § 172.

Act as to ambulances—L. 1870, Ch. 373.

Examining board of plumbers and inspectors of plumbing—General City Law, §§ 45-57; law regulating plumbers is constitutional—People ex rel. Mechanics vs. Warden, etc., 144 N. Y. 537; examination of plumbers—People ex rel. Kelly vs. Scott, 86 Hun 174; registration essential—Johnston vs. Dahlgren, 31 App. Div. 204; inspectors must be practical plumbers—Stearns vs. Tew, 6 Misc. 404.

Milk and butter shall be kept clean by dealers—Agricultural Law, § 32.

Cities of the second class shall maintain free public baths—L. 1892, Ch. 473; amended L. 1895, Ch. 351.

Old Charter

§ 9. **Board of health; appointment and qualification of members; health officer; powers and duties; city physicians**—The board of health of said city, authorized under chapter two hundred and seventy of the laws of eighteen hundred and eighty-five, shall consist of six persons, besides the mayor, of whom, at least, two shall be physicians of at least two years standing, and graduates of a regular medical college. They shall be appointed by the mayor and confirmed by the common council. Of those appointed in eighteen hundred and seventy-six, two shall hold for one, two for two and two for three years, and thereafter for three years, or the balance of any unexpired term, and until a successor shall be duly appointed and qualified. The mayor of the city shall be ex-officio president of said board. Said board of health shall appoint its own health officer, who shall hold office at its pleasure, and shall receive a salary to be fixed by the common council. Such officer must be a graduate of some regu-

lar medical college, and a physician of at least five years standing. Such board of health, in addition to the other powers conferred by said chapter two hundred and seventy, or any other act, now or hereafter in force, shall have the power by a vote of a majority of said board, to cause any person sick of any dangerous infectious disease to be removed to any proper hospital when, in its opinion, the public health requires, and to direct the location of all slaughter-houses, tallow chandler shops, butcher stalls, soap factories, tanneries, stables, privies, hog pens, sewers, or other offensive or unwholesome houses or places within said city, and to abate or remove nuisances of every kind, and to compel the owner or occupant of any house or place aforesaid to cleanse, remove or abate the same, whenever it deems it necessary for the health, comfort and convenience of the inhabitants of said city. It shall be an advisory board as to the proper ventilation of public city buildings, and in case any public school, or other public city building, is in *progress of erection, without proper facilities for ventilation, in the opinion of such board, it may stop the erection of such building, until the action of the common council can be had, and the common council shall have power to direct proper facilities for ventilation to be furnished and to restrain further work until such facilities are furnished. The common council shall elect, by ballot, for one year, not less than four, nor more than six city physicians, who shall be graduates of some regular medical college, and be of at least two years standing, who shall receive salaries to be fixed by the council, and shall attend gratuitously the poor of the city who are unable to hire physician's,* under the direction of the poor committee of the common council, the overseer of the poor, or other officer or board authorized by said common council. (*As amended L.* 1894, *Ch.* 364).

* Session Laws

§ 269. **Powers of common council as to sanitary or quarantine regulations; pest-house**—The common council shall have power to take such measures as they shall deem effectual to prevent the entrance of any pestilential or dangerous infectious disease into the city; to stop, detain and examine, for that purpose, every person coming from any place infected, or believed to be infected, with such a disease; to establish, maintain and regulate a pest-house or hospital at some place within the city, or not exceeding three miles beyond its bounds; to cause any person, not being a resident of the city, or if a resident of the city, who is not an inhabitant of this state, and who shall be, or be suspected of being infected with any such disease, to be sent to such pest-house or hospital; to cause any resident of the city, infected with any such disease, to be removed to such pest-house or hospital, if the health physician and two other physicians of the city shall certify that the removal of such resident is necessary for the preservation of the public health; to remove from the city or destroy any furniture, wearing apparel, or goods, wares or merchandise, or other articles or property of any kind, which shall be suspected of being tainted or infected with any pestilence, or which shall be, or be likely to pass into, such a state as to generate or propagate disease; to abate all nuisances of every description which are or may be injurious to the public health, in any way and in any manner they may deem expedient; and from time to time to do all acts, make all regulations and pass all ordinances which they shall deem necessary or expedient for the preservation of health and the suppression of disease in the city, and to carry into effect and execute the powers hereby granted. (*L.* 1880, *Ch.* 14).

See Dillon's Municipal Corporations, § 144.

§ 270. **Sanitary regulations as to canal boats, etc.; misdemeanor** — The

captain, master or person in charge of any canal boat, steamboat, or other craft or vessel, which shall enter the city, having on board thereof any person sick of any malignant fever, or other pestilential or infectious disease, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, unless the person so diseased became so on the way, and could not be left. It shall be the duty of such captain, master or person in charge, within two hours after his arrival, to report, in writing, to the mayor, or some other health officer, the fact of such sick persons being on board, and the name, description and location of his craft; and he shall not permit such sick person to land or be landed, until the board of health, or some member thereof, shall give permission for that purpose; and any neglect or violation of these provisions, or of any or either of them, shall be a misdemeanor, punishable with fine, or imprisonment, or both. (*L.* 1880, *Ch.* 14).

§ 271. **Same as to public conveyances; misdemeanor**—The owner, driver, conductor, or person in charge of any stage, railroad car, or other public conveyance, which shall enter the city, having on board any person sick of malignant fever, or pestilential or infectious disease, shall, within two hours after the arrival of such sick person, report in writing the fact, with the name of such person, and the house or place where he was put down in the city, to the mayor, or some member or officer of the board of health; and any and every neglect to comply with these provisions, or any of them, shall be a misdemeanor, punishable with fine or imprisonment, or both. (*L.* 1880, *Ch.* 14).

§ 272. **Same as to infected property; misdemeanor**—Any person who shall, knowingly, bring or procure or cause to be brought into the city, any property of any kind, tainted or infected with any malignant fever, or pesti-

lential or infectious disease, shall be guilty of a misdemeanor, punishable by a fine or imprisonment, or both. (*L.* 1880, *Ch.* 14).

§ 273. **Powers of board of health as to canal boats, etc.; misdemeanor**—The board of health shall have power, by an order in writing for that purpose, to be served on the master, captain, or person in charge of any canal boat, steamboat, or other vessel or craft, or any owner or consignee thereof, if such boat, craft or vessel be by them suspected to have on board any infected or diseased person or property, to require such boat or vessel not to enter the city, or to remove to some certain distance not exceeding three miles from the city; and every such master, captain, person in charge, consignee or owner, who shall be served with such order, shall be guilty of a misdemeanor, punishable with fine or imprisonment, or both, if such boat, vessel or craft shall enter the city, in violation of such order, or shall not be removed according to the tenor of such order, within a reasonable time, not exceeding three hours after the service of such notice. (*L.* 1880, *Ch.* 14).

§ 274. **Hotels and boarding-houses to report sick persons; physicians, infectious diseases; misdemeanor**—Every keeper of an inn, or boarding or lodging-house in the city, who shall have in his house at any time any sick person, shall report the facts and the name of the person in writing within six hours after he came to the house or was taken sick therein, to the mayor, or some officer or member of the board of health; every physician in the city shall report under his hand, to one of the officers above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. A violation of either of the provisions of this section, or any part of either of them, shall

be a misdemeanor, punishable by fine or imprisonment, or both, the fine not to exceed one hundred dollars, nor the imprisonment six months. (*L.* 1880, *Ch.* 14).

§ 275. **Disposition of fines collected**—All fines imposed under the last five sections shall belong to the city, and when collected, shall be paid into the city treasury, and be devoted to the maintenance and support of the pest-house, or of any hospital that may hereafter be established by the city. (*L.*1880,*Ch.*14).

§ 276. **Power of common council as to vaults, drains, etc.; assessment**—The common council shall have power to pass and enact such by-laws and ordinances as they shall from time to time deem necessary and proper for the filling up, draining, cleansing, cleaning and regulating any grounds, yards, basins, slips or cellars within the said city, that shall be sunken, damp, foul, incumbered with filth and rubbish, or unwholesome, and for filling or altering and amending all sinks and privies within the city, and for directing the mode of constructing them in future; and to cause all such work as may be necessary for the purpose aforesaid, and for the preservation of the public health and cleanliness of the city, to be executed and done at the expense of the city corporation, on account of the persons, respectively, upon whom the same may be assessed; and for that purpose to cause the expenses thereof to be estimated, assessed and collected, and the lands charged therewith, to be sold in case of nonpayment, in the same manner as is provided by law with respect to other public improvements within said city; and in all cases where the said by-laws or ordinances shall require anything to be done in respect to the property of several persons, the expenses thereof may be included in one assessment and the several houses and lots, in respect to which such

expense shall have been incurred, shall be briefly described in the manner required by law in the assessment roll for the general expenses of the city, and the sum of money assessed to each owner or occupant of any such house or lot, shall be the amount of money expended in making such improvement upon such premises, together with a ratable proportion of the expenses of assessing and collecting the moneys expended in making such improvements. (*L.* 1880, *Ch.* 14).

§ 277. **Same as to removal of dangerous buildings, fences, etc.**—Whenever in the opinion of the common council any building, fence or other erection of any kind, or any part thereof, is liable to fall down, and persons or property may thereby be endangered, they may order any owner or occupant of the premises on which such building, fence or other erection stands, to take down the same or any part thereof, within a reasonable time, to be fixed by the order, or immediately, as the case may require; or may immediately, in case the order is not complied with, cause the same to be taken down, at the expense of the city, on account of the owner of the premises, and assess the expense on the land on which it stood. The order, if not immediate in its terms, may be served on the occupant of the premises, or be published in the city paper, as the common council shall direct. (*L.* 1880, *Ch.* 14).

§ 278. **Same as to preservation of Genesee river, canals, etc.; navigation thereon; penalties**—The common council shall have power to pass all such ordinances as they shall think proper and necessary, to preserve the Genesee river, and all canals, slips and basins in the city; to prevent and punish the casting or depositing therein, or on the banks thereof, any earth, ashes or other heavy substances, filth, logs or floating mat-

ter; to prevent and remove all obstructions and accumulations of filth or rubbish therein, and to punish the authors thereof; regulate and prescribe the mode and speed of coming to and departing from the wharves and streets of the city, by steamboats, canal boats, and other crafts and vessels, and the disposition of the sails, yards, anchors and appurtenances thereof, while entering, leaving or abiding in the said city; and to regulate and prescribe by such ordinance, or through their officers, such a location of every canal boat, steamboat or other craft or vessel, or float, and such changes of station in and use of the same, as may be proper, in order to promote order therein, and the safety and equal convenience, as near as may be, of all such boats, vessels, crafts and floats, and may impose penalties, not exceeding one hundred dollars, for any offense against any such ordinance, and may by such ordinance, charge any such penalty upon the steamboat, canal boat, or other vessel, craft or float, the captain, master, owner, consignee or person in charge of which is thereby liable therefor. Nothing in this section contained shall be construed to authorize the common council, or any of its officers, to interfere with any of the laws of this state, now or hereafter to be enacted, or with the acts and regulations of the canal board, in relation to the Erie canal, or any other canal being the property of the state of New York. (*L.* 1880, *Ch.* 140).

Encroachments forbidden in Genesee river —L. 1805, Ch. 030, § 7. Published in full this book, *post*. See Index. See City of Rochester vs. Osborn, 5 Lansing 37.

§ 279. **Attachment for such penalties** —At, or at any time after, the commencement of any suit for a penalty imposed, in pursuance of the last section, against any person liable therefor, on the production of a certified copy of the ordinance imposing the penalty, and an affidavit showing the connection between the

person sued and any steamboat, canal boat, vessel, craft or float, the justice before whom, or any judge of the court in which suit is brought, shall issue or order the issuing of an attachment against such boat, vessel, craft or float, commanding the sheriff or any one of the constables of the county to attach and safely keep the same until discharged in due course of law. The fees allowed by law for serving an attachment against a non-resident debtor, and all the reasonable expenses incurred in keeping the property attached, shall be allowed to the attaching officer, and be taxed by such justice or the proper officer and added to and included in the final costs, if the city recover judgment. The attachment shall be discharged on the delivery to such justice or judge of a bond executed to the city by any claimant of the property, in a penalty, and two sureties to be approved by such justice or judge, conditioned for the payment of any judgment recovered against the defendant in the suit, in thirty days after the recovery thereof. If such property be not so discharged, execution upon any judgment obtained by the city in the suit shall be issued immediately, and shall be levied on such property, and the same shall be sold thereunder in the manner prescribed by law, in the same manner, and with the same effect as though it were the sole and unincumbered property of the defendant. (*L.* 1880, *Ch.* 14).

§ 280. **Provisions of state act applicable to the board of health**—The provisions of the act entitled "An act for the preservation of public health," passed April tenth, one thousand eight hundred and fifty, and the acts amendatory, thereof not in conflict with this charter, shall be applicable to the board of health of the city of Rochester. (*L.* 1880, *Ch.* 14).

See White Charter, § 281.

§ 232. **Commissioner of public safety shall appoint fire marshal**—Whenever the board of estimate and apportionment in any city shall so determine, instead of continuing under existing conditions, the commissioner of public safety shall appoint a fire marshal, and such other subordinates as may be prescribed by the board of estimate and apportionment, to hold office during his pleasure. The fire marshal and his subordinates employed in any city at the time such a change is determined upon by the board of estimate and apportionment, may be re-employed and transferred to the new department without civil service examination. (*Added by L.* 1902, *Ch.* 402).

NOTE—Under the Old Charter the fire marshal of Rochester was appointed by the common council—L. 1880, Ch. 14, § 8, as amended L. 1888, Ch. 86.

§ 233. **Powers of commissioner and fire marshal over buildings**—Upon such determination by the board of estimate and apportionment, the commissioner of public safety shall possess the following powers, and perform the following duties, any or all of which may be delegated to the fire marshal or his subordinates, or to any officer or member of the police or fire department: to enter into and examine all dwellings, houses, buildings, tenements, and factories of every description, and all lots, yards and enclosures: to see that the laws of the state and ordinances of the common council thereto, are complied with, and to prevent the construction and erection of structures and buildings which do not conform to law. (*Added by L.* 1902, *Ch.* 402).

NOTE—**Powers of commissioner of public safety of Rochester** under § 233, *supra*, delegated to fire marshal, by order dated July 1st, 1913.

NOTE—**Powers and duties have been given the fire marshal** as follows: Shall enforce provisions of the Old Charter (§ 223, page 90 these books), relating to the protection of persons and property from fires [resolution of common council, April 11th, 1870]; shall be the custodian of election property and have charge of storing and setting up ballot machines ("An ordinance regulating storage, care, etc., of election booths and all property used at primary and general elections," passed April 10th, 1900); shall enforce the ordinance relating to morgues (order of Mayor Carnahan, December 4th, 1900, under § 24, White Charter, ordinance passed March 29th, 1898); shall enforce ordinance relating to the storage of combustibles (passed Febuary 26th, 1901); shall enforce ordinance relating to the storage and sale of explosives (passed May 11th, 1897; amended May 21st, 1901); shall enforce ordinance relating to buildings (passed May 11th, 1897; amended September 30th, 1898, June 5th and June 19th, 1900).

Old Charter

§ 229. **Powers and duties of fire marshal**—The fire marshal shall have such powers and perform such duties as the common council shall, from time to time direct, and with such salary as the common council shall determine. He shall examine plans and specifications for all new buildings and for all alterations and additions to existing buildings owned or to be built by the city, through any of its departments, for the purpose of determining the fitness of said buildings for the purposes for which they are intended or are likely to be used; to make sure that the foundations are adequate, the walls of proper strength, the arrangement such as to secure ample natural light, good ventilation, and other sanitary conditions, particularly in school houses and fire department buildings, and means of egress, easy and commodious. He shall have authority to procure with the approval of the common council such expert counsel and advice as he may deem necessary, and any reasonable expense therefor, after being duly audited and approved by the common council shall be paid from the contingent fund. A copy of the plans and specifications for all new buildings, alterations and additions referred to, approved by the fire marshal must be filed with the city clerk and be certified by him to the department of officials having jurisdiction, before it shall be lawful to let contracts, commence work or incur any expense therefor. (*As amended L.* 1897, *Ch.* 784).

ARTICLE VII

DEPARTMENT OF PUBLIC INSTRUCTION

Note—The White Charter as first enacted declared, "that the department of public instruction shall continue as provided by law" (L. 1898, Ch. 182, § 240). The original act did contain certain provisions as to the said department (§§ 241–252, inclusive), but these sections were afterwards repealed (L. 1899, Ch. 581). Subsequently the above mentioned § 240 of the White Charter was amended, and sections 241–247, inclusive, were added (L. 1902, Ch. 560), creating a uniform department of public instruction for cities of the second class but expressly excepting Syracuse and Rochester. This exception makes the provisions applicable only to the cities of Albany and Troy. Said sections 240–247, as they now exist, are as follows:

§ 240. **Board of education**—There shall be a board of education, composed of three members, to be called commissioners of education, who shall be appointed as hereinafter provided, which board shall be the head of the department of public instruction. They must have been electors of the city for a period of at least five years immediately preceding the date of appointment. Within ten days after the passage of this act, the mayor shall appoint one commissioner to serve until February first, nineteen hundred and four, one to serve until February first, nineteen hundred and six, and one to serve until February first, nineteen hundred and eight: and thereafter, at the expiration of the term of any commissioner, the mayor shall appoint his successor for the term of six years, which shall be the term of office of every commissioner so appointed. In the case of a vacancy in the office of commissioner, the mayor shall fill the vacancy by the appointment of a commissioner for the remainder of the term. The commissioners shall serve without pay. (*As amended L. 1902, Ch. 560*).

§ 241. **President, superintendent and teachers**—The board shall appoint one of its members president, who shall exercise all the powers usually incident to such office. It shall also appoint a suitable person other than a member thereof, superintendent of schools in the city, who shall exercise the powers and discharge the duties hereinafter defined, and shall be allowed such compensation for his services as the board of estimate and apportionment may at any time determine. It shall also appoint from time to time such other employees including teachers and attendance officers as the school system may require; the amount of their compensation shall be fixed by the board of estimate and apportionment. It has the care, custody and safe keeping of all school property, real and personal; and shall make rules and regulations for the government of the schools and its employees except as hereinafter provided; prescribe courses of study and text-books; supply the requisite text-books and stationery for the use of indigent pupils; provide the several schools with the necessary school apparatus, maps and music books, the expense thereof to be defrayed out of the school moneys of the city. No member of the board shall be eligible to appointment or employment by the board. (*Added by L. 1902, Ch. 569.*)

§ 242. **Powers of board**—The board has all the powers and is charged with all the duties of commissioners of common schools, and of trustees of the several school districts in this state, under the general statutes relating to common schools, so far as such powers and duties can be made applicable to the schools herein provided for, and are not inconsistent with the provisions of this act. (*Added by L. 1902, Ch. 569.*)

§ 243. **Charges against superintendent**—The superintendent of schools shall hold office during the pleasure of the board. Any person may prefer charges of incompetency, maladministration or misconduct in office against the superintendent, and

thereupon the board shall proceed to hear the charges, and in case the same shall be sustained by the affirmative votes of a majority thereof, the superintendent shall be dismissed from his office. (*Added by L.* 1902, *Ch.* 560).

§ 244. **Powers and duties of superintendent.** The superintendent has power, and it is his duty to see that all rules and regulations of the board are complied with by the principals and teachers; to determine the different grades of study which shall be pursued in the various departments of the several schools; to transfer teachers from one school to another, or from one grade to another; to suspend any teacher temporarily for cause, provided, however, that the reasons for such suspension shall be immediately transmitted to the board in writing; to transfer pupils from one school to another; to prescribe rules and regulations for the admission, examination and promotion of pupils; and he shall have the charge of the school libraries. (*Added by L.* 1902, *Ch.* 560).

§ 245. **Appointment of teachers.** All assistant teachers shall be appointed for a probationary period of one year, at the expiration of which term, unless satisfactory evidence of incompetency is submitted by the superintendent, the probationer may be elected by the board. Thereafter such teacher shall hold the position during good behavior and shall be removable only for cause, after a hearing, by the affirmative votes of a majority of the board. All probationary appointments shall be made from the head of a merit list, upon which the names of all eligible candidates for appointment as assistant teachers shall appear in the order of their rank in scholarship and qualifications for teaching; and it shall be the duty of the board to prescribe by rules not inconsistent with the laws of the state the means of determining such rank in scholarship and qualifications. All principals shall hold their positions during good behavior, and

shall be removable only for cause, after a hearing, by the affirmative votes of at least a majority of the board. (*Added by L.* 1902, *Ch.* 560).

§ 246. **Repairs of school buildings**— Whenever in the opinion of the board any repairs are needed to the public school buildings in the city, it shall call upon the city engineer to make such repairs. It shall recommend to the common council, when in its opinion the public interests require the sale of any school-house, the purchase or lease of any land or building for a school-house, and when authorized thereto by an ordinance of the common council, the board of contract and supply may make such sale, purchase or lease in the manner in this act provided; and it may recommend to the common council the erection of any school building; and when authorized thereto by an ordinance of the common council, the board of contract and supply may erect such buildings in the manner and upon the conditions prescribed in this act. (*Added by L.* 1902, *Ch.* 560).

§ 247. **School moneys**— All public money apportioned or appropriated to or for the city, or to or for any of the school districts therein, or for the school libraries, shall be paid by the proper officers to the treasurer, and in the accounts kept by him shall be credited to the department of public instruction and paid out by him upon bills properly allowed and audited in the same manner as obtains in the case of other bills against the city. (*Added by L.* 1902, *Ch.* 560).

Provisions not to apply to Rochester or Syracuse—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed, but such repeal shall not affect any right already existing or accrued, or any liability incurred prior to the passage of this act; nor shall anything in this act be construed to affect or repeal the existing law with reference to union free school, district number one of the

former town of Lansingburgh, but the provisions of this act shall not apply to the cities of Rochester and Syracuse. (*L.* 1902, *Ch.* 560, § 3).

NOTE—The Statutory Revision Commission of the State of New York (1890–1900) proposed as Chapter XXIII of their scheme of General Laws, "The Education Law," which was to include the University Law (L. 1892, Ch. 378, as amended), the Consolidated School Law (L. 1894, Ch. 556, as amended) and other existing laws on the subject of education. The said "Education Law" was never adopted. Provisions as to the Regents of the University of the State of New York are to be found in the University Law above noted. The titles covered by the Consolidated School Law, as it exists, are as follows:

Title I. State Superintendent of Public Instruction.

II. State School Moneys and their Apportionment.

III. Supervisors.

IV. Town Clerks.

V. School Commissioners.

VI. School Districts.

VII. School Meetings.

VIII. Union Free Schools.

IX. School House Sites.

X. Teachers' Institutes.

XI. Teachers' Training Classes.

XII. State Scholarships in Cornell University.

XIII. Common School and Public Libraries.

XIV. Appeals to Superintendent of Public Instruction.

XV. Miscellaneous Provisions—Including Forfeiture of School Moneys, Changes in Text Books, Contracts with Teachers, Drawing, Music, Industrial Training, Kindergarten, Arbor Day, Schools for Orphans, Indians and Colored Children.

XVI. Compulsory Education of Children.

SCHOOL LAW OF ROCHESTER

The department of public instruction in Rochester is conducted by a corporate body entitled "The Board of Education of the City of Rochester," which is composed of five commissioners of schools, elected at large by the electors of the city. The school law of Rochester is the so-called "Dow Law" (L. 1898, Ch. 660; amended L. 1899, Ch. 139; L. 1900, Ch's. 309 and 535; L. 1901, Ch's. 106 and 727), which is an amendment of sections 123–141, inclusive, of the "Old Charter" of Rochester (L. 1880, Ch. 14). The said Rochester School Law, including the amendments of 1903, is as follows:

Old Charter

§ 123. **Board of education**—The commissioners of common schools, in said city, shall constitute a board, to be styled "The Board of Education of the City of Rochester," which shall be a corporate body in relation to all the powers and duties conferred upon it by virtue of this act. The said board shall meet on the first Monday of each and every month and at such other times as it shall from time to time appoint. Special meetings shall be called by the secretary upon order of the president or upon request of a majority of the said board. A majority of said board shall constitute a quorum for the transaction of business. In the absence of a quorum, a minority of said board may adjourn a meeting from day to day. Said board shall, at the first regular meeting in January of each year, elect one of its members president, who shall, when present, preside at all its meetings. In the absence of the president, the said board shall elect some other

member to preside at such meetings and to perform the duties of the president during such absence. On and after the first day of January, nineteen hundred, the board of education of the city of Rochester, shall be composed of five commissioners of schools to be elected by the electors of the city at large; and at the city election to be held in eighteen hundred and ninety-nine, there shall be elected by the electors of the city at large, five commissioners of schools, three of whom shall be elected for a term of two years each, and the other two of whom shall be elected for the terms of four years each. Their terms of office shall commence on January first, nineteen hundred. At the biennial city election to be held in the city of Rochester next preceding the expiration of the terms of any of said commissioners of schools, their successors shall be elected for terms of four years each. In case a vacancy shall occur in the office of a member of the board of education, for any cause, the mayor of said city shall fill such vacancy by the appointment of a suitable person; and the person so appointed shall hold office by virtue of such appointment until and including the thirty-first day of December following the next succeeding biennial city election, at which election a commissioner of schools for the unexpired term shall be elected by the city at large. Said commissioners shall receive an annual compensation of twelve hundred dollars each, to be paid monthly from the contingent fund of said board of education, as other salaries of school officers are paid. (*As amended L.* 1901, *Ch.* 727).

The Dow law accomplished a complete revision and established a practical codification of the public school system of Rochester. People ex rel. Noyes vs. Board of Education, 53 App. Div. 208, (Nov. 1900).

§ 124. **Removal of members of board by mayor.** Any member of the said board of education may be removed by the mayor of the said city upon proof, either of official miscon-

duct in office, or of negligence of official duties, or of conduct in any manner connected with his official duties, which tends to discredit his office or the school system, or for mental or physical inability to perform his duties as a member of said board; but before such removal of said member he shall receive due and timely notice in writing of the charges against him, and a copy thereof, and shall be entitled to a hearing, on like notice, before the mayor, and to the assistance of counsel on said hearing. (*L.* 1898, *Ch.* 660).

§ 125. **Commissioners' districts**—The said board shall, for the more effective oversight and control of the public schools of said city, and for the purposes prescribed in this act, at the first meeting of the said board after this act takes effect, and the first meeting of the said board in each fiscal year thereafter, divide all the schools of the city into as many commissioners' districts as there shall be members of the said board, and shall assign one such district to each commissioner, who shall have special supervision thereof. (*Repealed by L.* 1900, *Ch.* 535; *same repeal L.* 1901, *Ch.* 106).

§ 126. **General duties of board of education**—The said board of education shall manage, control, maintain and provide for the public schools of said city, and the public school system thereof, and shall manage and control the property, real and personal, which shall belong to the said city and be used for the purposes of education, subject only to the general statutes of the state relating to public schools and public school instruction and to the provisions of this act. (*L.* 1898, *Ch.* 660).

See note under § 21 White Charter, this book, page 83.

§ 127. **Specific duties of board of education**—The said board shall have power:

1. ESTABLISHMENT OF SCHOOLS AND CLASSES—To establish kindergartens, common schools, one or more high schools, manual training

schools or classes, evening classes or schools for special studies, training school or classes for teachers, and truant schools, and shall have power to discontinue or consolidate schools. Any training school or high school, heretofore established and maintained by the public school authorities and registered as high schools by the regents of the state of New York, shall be maintained in full efficiency. The said high schools shall be so organized as to furnish the benefit of further education to pupils of both sexes who shall have finished the grammar school course, and to other residents of school age equally prepared, and the said board shall have power to make, from time to time, for the said high schools, all needful rules and regulations, and to prescribe conditions on which pupils shall be received and instructed therein and discharged therefrom. (*L.* 1898, *Ch.* 660).

2. CHANGING GRADES AND COURSES OF STUDY—To change the grades of all schools, or of any school, and of all classes of any high school or other schools under its charge, and to adopt and modify courses of study therefor. (*As amended L.* 1900, *Ch.* 535; *same amendment L.* 1901, *Ch.* 166).

3. FIXING QUALIFICATION OF TEACHERS—To fix a standard of qualification as a necessary requirement for the service of all principals and teachers in the high schools and other schools of the city; which requirement may be higher, but not lower, than the minimum qualifications required by the general laws of the state and the provisions of this act. (*L.* 1898, *Ch.* 660).

4. PURCHASING SCHOOL PROPERTY AND SUPPLIES—As herein provided, to purchase, lease or improve sites for school houses; to build, purchase, lease, enlarge, improve, alter and repair school houses and their appurtenances; to purchase, improve, exchange and repair school apparatus, books, furniture and appendages; to procure fuel and defray the

contingent expenses of the schools under its control; to pay the wages of all officers, principals, teachers and employees in the said department of education, as herein provided. (*L.* 1898, *Ch.* 660).

5. APPOINTMENT OF OFFICERS—To appoint as herein provided:

a. A secretary of the board of education, who shall serve during the pleasure of the board. (*L.* 1898, *Ch.* 660).

b. A superintendent of public schools, whose term of office shall be four years. (*L.* 1898, *Ch.* 660).

c. A librarian, whose term of office shall be two years. (*L.* 1898, *Ch.* 660).

d. A supervising architect of experience and good standing in his profession, who shall serve during the pleasure of the board. (*L.* 1898, *Ch.* 660).

e. All school principals and teachers. (*L.* 1898, *Ch.* 660).

See note under § 2 on page 183 this book.

f. All janitors and truant officers, subject however, to the restrictions imposed by the general laws of the state. (*L.* 1898, *Ch.* 660).

g. A policeman, who shall hold his office during the pleasure of said board, and whose salary shall be fixed and paid by the board of education from the funds raised for its use, and who shall have the same powers as the other policemen of said city, and shall perform such duties as said board of education may impose. (*L.* 1898, *Ch.* 660).

h. Such other officers, clerks, subordinates and employees as it may deem necessary for the proper discharge of its administrative duties. (*L.* 1898, *Ch.* 660).

6. FILLING VACANCIES—To fill any vacancies which may occur in any of the offices or positions in this section provided for. (*L.* 1898, *Ch.* 660).

7. NON-RESIDENT PUPILS—To allow the children of persons not resident within the city, to attend any of the schools of said city, under the care and control of said board, upon such terms as said board shall by resolution prescribe, fixing the tuition which shall be paid therefor. (*L.* 1898, *Ch.* 660).

8. ADOPTION OF ORDINANCES—Subject to the provisions of law and of this act, to enact rules and regulations for the proper execution of all duties devolved upon said board; its members and committees; for the transaction of all business pertaining to the same; for defining the duties of all its officers, clerks, superintendent, principals, teachers, examiners, subordinates and employees; for regulating the manner of making disbursements from any of the funds appropriated for school purposes; for the proper execution of all powers vested in it by law and for the promotion of the welfare and best interests of the public schools and public school system of the city in the matters committed to its care. (*L.* 1898, *Ch.* 660).

§ 128. **Regulating salaries**—The said board of education shall fix and regulate, within the proper appropriation of money therefor, the salaries and compensation of each of the persons appointed by it to any office, place or position, pursuant to the powers granted by the preceding section. (*L.* 1898, *Ch.* 660).

§ 129. **Annual report of state superintendent**—The said board of education shall, between the first day of August and the thirtieth day of September, in each year, make and transmit to the state superintendent of public instruction, a report in writing for the state school year ending on the next preceding thirty-first day of July, which report shall be in such form and shall state such facts as the state superintendent and the school laws of the state shall require. (*L.* 1898, *Ch.* 660).

§ 129a. **Monthly report in newspapers**—It shall be the duty of said board to publish, as hereinafter provided, in one of the daily papers of said city, a report of the final proceedings of said board for the preceding month. (*L.* 1898, *Ch.* 660).

§ 130. **Annual report to common council**—It shall be the duty of said board to prepare and transmit, within ten days preceding the close of the fiscal year, to the common council, correct statements of the receipts and disbursements of money under and in pursuance of provisions of this act during said fiscal year, in which account shall be stated, under appropriate heads:

1. The moneys raised by the common council under the provisions of this act. (*L.* 1898, *Ch.* 660).

2. The school moneys received by the city treasurer from the county treasurer or the state. (*L.* 1898, *Ch.* 660).

3. All other moneys received by the city treasurer, subject to the order of the board specifying the same, and the sources thereof. (*L.* 1898, *Ch.* 660).

4. The manner in which such sums of money shall have been expended, specifying the amount paid under each head of expenditure, and whether any part of any such fund remains unexpended. (*L.* 1898, *Ch.* 660).

5. Whether any and what claims or bills against the department, or obligations, incurred by said department remain unpaid. (*L.* 1898, *Ch.* 660).

6. The said board shall also at the same time certify to the common council the total number of persons registered as pupils in the public schools of the said city during the current fiscal year. (*L.* 1898, *Ch.* 660).

§ 131. **Annual estimates to common council**—It shall be the duty of said board of education to certify on or before the first day of March of each year, to the common council, an estimate of the amount of money required to maintain the department of education for the current year, specifying in detail the objects thereof, under appropriate heads:

1. For salaries of teachers; 2. For buildings, including purchase of sites; 3. For repairs; 4. For library; 5. For contingent expenses. (*L.* 1898, *Ch.* 660).

§ 132. **Annual appropriation of school moneys**—The common council shall have power and it shall be its duty, if the said estimate, certified by the board of education, as herein provided, shall not exceed in amount a sum equal to twenty-five dollars per capita, based on the total number of persons enrolled as pupils in the public schools in said city, for the year ending on the thirty-first day of December, next preceding the levying of the general city taxes in each year, to appropriate and raise by tax to be levied equally upon the real and personal estate in said city, which shall be liable to taxation for the ordinary city taxes or for the city and county charges, such sum or sums of money, so certified to be necessary for the maintenance of the department of education and to defray the expenses of the said department; but if the total amount of said estimate shall exceed in amount a sum equal to twenty-five dollars per capita, based upon the total number of persons so enrolled as pupils as aforesaid, then the common council may in its discretion, appropriate and raise by tax, as herein provided, any sum not greater than the estimate so certified and not less than twenty-five dollars per capita, based on said total number of persons so enrolled as pupils as aforesaid, provided nevertheless, that the tax to be levied as aforesaid and collected by virtue of this act shall be

collected at the same time and in the same manner as other city taxes, and the common council of said city are authorized and directed, when necessary, to raise by loan in anticipation of the taxes, the amount to be raised, collected and levied as aforesaid or any part thereof. (*L.* 1898, *Ch.* 660).

§ 133. **Certificate of amount to be appropriated**—It shall be the duty of the common council within fifteen days after receiving the certificate of the board of education hereinbefore required, of the sum necessary or proper to be raised for school purposes, to determine and certify to said board of education the amount that will be raised by them for the year commencing on the first day of the preceding January for the purposes mentioned in said certificate. The amount raised for school purposes shall constitute five separate and distinct funds namely: Teachers' fund, contingent fund, building fund, repair fund and library fund, and in case the said common council shall neglect or fail to certify to the board of education, as above specified, the amount that will be raised by them within thirty days, then the said common council shall raise the several amounts embraced in the certificate of the board of education, as specified therein, which amount shall be subject to the disposal of the board of education. (*L.* 1898, *Ch.* 660).

§ 134. **Apportionment of appropriations**—If the sum appropriated for the department of education, as provided in section one hundred and thirty-three, shall be less than the total amount certified by the said board in said estimate, it shall be the duty of said board, within fifteen days after receiving the certificate of the common council of the sum appropriated by said common council for the department of education, to apportion the said sum to the teachers' fund, the building fund,

the repair fund, the library fund and the contingent fund, and to certify such apportionment to the common council; the said apportionment so certified shall constitute the teachers' fund, building fund, repair fund, library fund and contingent fund for the then current year, provided however, that in such apportionment to such funds, the amount apportioned to any fund shall not exceed the amount originally certified as necessary to be raised for such fund. (*L.* 1898, *Ch.* 660).

§ 135. **Appropriations not to be exceeded**—It shall be the duty of said board, in all their expenditures and contracts, to have reference to the amount of moneys which shall be subject to their order during the then current year for the particular expenditure in question, and not to exceed that amount; and they shall apply the moneys raised and received by them for the support of the common schools in said city, in such a manner as shall secure as nearly as may be an equal period of instruction to all the children over five and under twenty-one years of age. (*L.* 1898, *Ch.* 660).

§ 136. **Deficiencies may be met**—If before the expiration of the fiscal year, it shall appear that any sum or sums raised by the common council for the board of education will be inadequate to maintain the department of education to the expiration of such fiscal year, the common council shall have power and may, upon application of the board of education, borrow on the credit of said city such sum as it may deem necessary to maintain said department of education until the end of such fiscal year, and shall apportion such moneys to the several funds maintained for the benefit of such department. (*L.* 1898, *Ch.* 660).

§ 137. **School moneys in custody of city treasurer**—All moneys to be raised pursuant to the provisions of this act and all school moneys by law appropriated to or pro-

vided for said city, shall be paid to the city treasurer thereof, who, together with the sureties upon his official bond, shall be accountable therefor in the same manner as for other moneys of said city. The said city treasurer shall be liable to the same penalties for any official misconduct in relation to said moneys, as for any similar misconduct in relation to other moneys of said city. (*L.* 1898, *Ch.* 660).

§ 138. **Construction and enlargement of school buildings**—Whenever the board of education shall determine to build or enlarge a school building, it shall cause plans and specifications to be prepared therefor, and shall submit the same to the board of health for approval as to sanitary provision. The board of health shall thereupon and within ten days thereafter certify in writing to the board of education its approval or disapproval of such plans and specifications, and upon the failure of the board of health to so certify, then such plans and specifications shall be deemed to be approved by the board of health. (*As amended L.* 1900, *Ch.* 535; *same amendment L.* 1901, *Ch.* 106).

§ 139. **Contracts for work and supplies**—Whenever such board of education shall build, enlarge, repair, furnish or supply any school building or buildings, or publish reports of its proceedings, at an estimated expense of not less than fifty or more than two hundred and fifty dollars, it shall be the duty of the officials having jurisdiction, to procure estimates of such work or supplies from two or more competitors, wherever practicable, and report such estimates to the board for its consideration and action. Whenever such board shall build, enlarge, repair, furnish or supply any school building or buildings, or make any improvements or repairs or purchase any supplies, or publish reports of its proceedings, the cost of which will exceed two hundred and fifty dollars, the board shall proceed as follows:

a. Said board shall advertise for bids for the period of two weeks, at least twice in each week, in two newspapers published in the city of Rochester, and which resolution providing for the same shall be entered in full by the clerk on the record of proceedings of said board. (*L.* 1898, *Ch.* 660).

b. The bids, duly sealed up, shall be filed with the clerk by twelve o'clock, noon, of the last day, as stated in the advertisement. (*L.* 1898, *Ch.* 660).

c. The bids shall be opened at the next meeting of the board and publicly read by the clerk. (*L.* 1898, *Ch.* 660).

d. Each bid shall contain the name of every person, firm or corporation interested in the same, and shall be accompanied by a sufficient guarantee of some disinterested person, that if the bid is accepted, a contract will be entered into and the performance of it properly secured by bonds duly approved. (*As amended L.* 1900, *Ch.* 535; *same amendment L.* 1901, *Ch.* 106).

e. If the work bid for embraces both labor and materials, each must be separately stated, with price thereof. (*Repealed by L.* 1900, *Ch.* 535; *same repeal L.* 1901, *Ch.* 106).

f. The board may, in its discretion, accept any bid for both labor and material which shall be most advantageous to the city, or it may reject any or all bids, as the interest of the city may require. (*L.* 1898, *Ch.* 660).

§ 140. **Members of board not to hold city office nor be interested in contracts** —No member of said board of education shall, during the period he holds said office, be appointed to, or be competent to hold any office of which the emoluments are paid from the city treasury, or paid by any fees directed to be paid by any act or ordinance of the

board of education, or be directly or indirectly interested in any contract as principal, surety or otherwise, or the furnishing of any materials or supplies for the city of Rochester, directly or by another person, the expenses or consideration whereof are to be paid under any ordinance, resolution or order of the board of education. No member of said board shall vote for the payment of any such bill for materials or supplies after notice that any member of said board is interested therein or in the payment thereof. Any violation of this section shall be deemed a misdemeanor and punishable as such. (*L.* 1898, *Ch.* 660).

City officers not to be interested in contracts—White Charter, § 455, this book, *post*.

§ 140a. **Custody of school libraries**—The said board of commissioners shall be trustees of the school library or libraries in said city, and all the provisions of the law which are now or hereafter may be passed relative to the district school libraries, shall apply to the said commissioners. They shall also be vested with the same discretion as to the disposition of all moneys appropriated by any law of this state for the purchase of libraries which is therein conferred upon the inhabitants of school districts. It shall be their duty to provide for the safe keeping of the library or libraries. (*L.* 1898, *Ch.* 660).

§ 140b. **Duties of secretary and minutes of board** — The secretary of the said board shall have charge of the rooms, books, papers and documents of the board, except such as pertain to the office and duties of the superintendent. He shall perform such duties as may be required of him by the board, its committees or members. He shall have right to administer oaths and take acknowledgments, but without fee. He shall be clerk of the board, and shall keep, or cause to be kept, a record of the proceedings thereof. He shall

also keep or cause to be kept a set of records showing the receipts and expenditures separately through each of the different funds of the school board. Said expenditures through each and every fund shall be subdivided so as to show the cost of maintaining each school separately and the supplies used therein. He shall also keep or cause to be kept a series of receipts to be signed by either the principals or janitors certifying to all repairs and improvements made and all supplies received for their respective school buildings and premises. The printed record of said board, or a transcript thereof, certified by the president or clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth, and such records, and all the books, accounts, vouchers and papers of said board shall at all times be subject to the inspection of the common council and of any committee thereof. He shall also collect and pay into the city treasury monthly all tuition fees. (*L.* 1898, *Ch.* 660).

§ 140c. **Qualifications of superintendent**—To be eligible to the position of superintendent, an applicant must be a graduate of a college or university recognized by the regents of the state of New York, together with at least ten years successful experience as a practical educator. (*L.* 1898, *Ch.* 660).

§ 140d. **Powers and duties of superintendent**—The superintendent has power and it is his duty to enforce the laws of the state applicable to the public schools of the city of Rochester, and all the rules and regulations of the said board of education, except as herein provided. He shall visit the schools of the city as often as he can consistently with his other duties, and inquire into the character of the instruction, management and discipline, and shall advise and encourage the pupils, teachers and officers thereof. He shall prescribe, subject to the rules of the board, and

Old Charter

Duties of superintendent—Continued

the provisions herein, suitable registers, blanks, forms and regulations for making of all reports and for conducting all necessary business connected with the school system and he shall cause the same, with such information and instructions as he shall deem conducive to the proper organization and government of the schools, to be transmitted to the persons entrusted with the execution of the same. He shall report to the said board, from time to time, as he may be required or as he may deem necessary, a statement of the condition of the schools, and all such matters relating to his office, and such plans and suggestions for the improvement of the schools and for the advancement of public instruction in the city of Rochester as he shall deem expedient. He may appoint and define the duties of such clerks as are authorized by the board. He shall have the recommendation of the number of teachers necessary for each of the several schools. He shall assign supply teachers to duty whenever occasion requires, and may transfer temporarily principals, teachers and pupils from one school to another. It shall be his duty to maintain proper discipline in the management and conduct of the schools, and he may, in his discretion, suspend or expel any pupil guilty of misconduct or insubordination, and may suspend for cause any teacher, principal or employee. He shall immediately report such discipline to the board. It shall be his duty to report to the board inefficiency on the part of principals, teachers or employees. He shall nominate special teachers and supervisors. He shall enforce the compulsory education law and direct truant officers in the discharge of their duties. He shall maintain his office in such buildings as the board may direct, and he shall not be required to perform any duty except such as relates to the educational work of the department. (*L.* 1898, *Ch.* 660).

§ 140e. **Powers of principals**—A principal, under the general supervision of the superintendent, shall have the direction of the school over which he is placed, shall assign the teachers to their respective grades in the school, and direct them as to methods of instruction and discipline. He may suspend any teacher for a definite time for inefficiency or insubordination. He shall report immediately such suspension, with reasons therefor, to the superintendent. (*L.* 1898, *Ch.* 660).

Position of principal not within classified civil service and veterans not protected—In re Samuel C. Pierce vs. Board of Education of Rochester, affirmed, App. Div., Nov. 24th, 1903, at this date not reported.

§ 140f. **Powers of librarian**—The librarian shall have, subject to the rules and regulations of the said board, the general direction of the library, the custody and care of the books; shall supervise the letting out and the return thereof; make all purchases of books; have bound or cause to be repaired the damaged books belonging thereto; appoint and remove, with the approval of the board, such assistants, clerks or employees as the board may authorize; collect and account for fines and enforce penalties which may be incurred by violation of regulations relating to the library. (*L.* 1898, *Ch.* 660).

§ 140g. **Duties of supervising architect**—It shall be the duty of the supervising architect, subject to the rules and regulations of the said board, to inspect school buildings, prepare plans and specifications for new buildings, annexes and repairs and to supervise the construction thereof. (*L.* 1898, *Ch.* 660).

§ 140h. **Duties of board of examiners**—A board of examiners is hereby constituted, whose duty it shall be to examine all applicants for positions of principal or teacher in the public schools of Rochester, and to prepare an eligible list of such applicants as they may deem qualified, and as hereinafter

provided, classified as to position and graded according to scholarship, character and general fitness. Such board of examiners shall consist of the superintendent together with two persons appointed by the said board of education, upon nomination of the superintendent. The term of service of the two persons so appointed shall be at the pleasure of the said board of education. They shall be paid such compensation for services actually rendered as the said board of education shall prescribe. To be eligible to appointment as examiner, an applicant must be (a) a graduate of a college or university recognized by the regents of the state of New York, and a practical educator, having had at least five years successful experience in teaching since such graduation; or (b) must have a state certificate obtained as the result of an examination held since eighteen hundred and seventy-five together with at least ten years successful experience in teaching, since obtaining such certificate. No principal or teacher in the public schools of Rochester shall be allowed to serve on the said board of examiners. The said board of examiners shall hold such examinations as the superintendent may prescribe and prepare the said eligible list. The superintendent shall report the said list to the said board of education and shall subscribe the same into a book which shall be open to public inspection. Any name placed upon the eligible list shall be entitled to remain thereon without further examination for the period of two years, after which the name shall be dropped from said list and shall not be restored thereto except after a new examination. (*As amended L.* 1900, *Ch.* 535; *same amendment L.* 1901, *Ch.* 106).

§ 1401. **Qualifications of principals.** The superintendent shall nominate principals for each school from the first ten names certified by the said board of examiners, as qualified for principalship. But no person shall be

appointed to the position of principal of the free academy or high school or of a grammar school, or teacher in the free academy or high school who has not had two years successful experience as a teacher and who does not possess one of the following qualifications: (a) Completion of a four years' course in a college or high school recognized by the regents of the state of New York, (b) completion of a four years' course in a normal school recognized by the state department of public instruction, (c) holder of a life certificate of this state granted upon examination. The superintendent and the principal of a school, shall constitute a board for the nomination of teachers for such school from the first twenty-five names on said eligible list for teachers; but no person shall be appointed as teacher in a grammar school or kindergarten who is not a graduate of a normal school after a course of study therein of at least two years, or has not pursued a course in pedagogy in a state training school or a city training school for one year. Except that any graduate of the normal course of the Rochester Athenæum and Mechanics' Institute after a course of study therein of at least two years may be appointed in any of the schools of said city as teacher of manual training, domestic science, domestic art or any of the special subjects comprised in said normal course of said institute. The said board of education shall consider such nominations and upon approval appoint the persons so nominated. But any teacher in the employ of the said department of education at the time of the passage of this act shall be exempt from the conditions as to qualifications or eligibility imposed by this amendment and by said chapter six hundred and sixty of the laws of eighteen hundred and ninety-eight; and all such teachers, except supply teachers, shall be deemed to be upon the eligible list for appointment. (*Amended L.* 1900, *Ch.* 309; *last amended L.* 1900, *Ch.* 535; *same amendment L.* 1901, *Ch.* 106).

§ 140j. **Promotions and removals of principals**—Any principal or teacher who may have been appointed to the same school for three successive years, may, upon the recommendation of the superintendent, be promoted by the said board of education to permanent service in said school during good behavior; thereafter, they may be suspended or removed as herein provided, only for cause and after a hearing. Any principal or teacher, before such promotion, shall be eligible to reappointment without certification by the said board of examiners. (*L.* 1898, *Ch.* 660).

See note under § 2, p. 183, this book; also § 141c, p. 182 and § 140m, this page.

§ 140k. **Temporary assignments**—The said board of education shall from time to time designate the number of persons having the highest standing upon the said certified lists of qualified principals and teachers respectively, who shall be eligible for temporary appointments as supply principals and teachers. From the number so designated the superintendent shall from time to time assign to duty at the several schools such principals or teachers for temporary service as he may deem the exigencies of such schools to require. (*L.* 1898, *Ch.* 660).

§ 140l. **Certain teachers exempt**—Any officer, principal or teacher in the employ of the said department of education at the time of the passage of this act shall be exempt from the conditions as to qualifications or eligibility imposed by this act. (*L.* 1898, *Ch.* 660).

§ 140m. **Suspension and removal of teachers**—The said board of education may suspend any principal or teacher for a definite time, and may for cause remove any officer, principal, teacher or employee; provided, however, that no officer, principal or teacher shall be removed until opportunity for a hearing at a meeting of the board shall have been given. All suspensions by principals shall be subject to review by the superintendent. Suspensions

by the superintendent shall be subject to review by the board. Any person suspended shall not be entitled to salary for time of suspension unless such suspension is revoked by superior authority. (*L.* 1898, *Ch.* 660).

See note under § 2, p. 183, this book; also § 141c, p. 182.

§ 141. **Ordinances as to school property**—Said board of education shall prepare and report to the common council such ordinances and regulations as may be necessary or proper for the protection, safe keeping and preservation of the school-houses, lots and sites and appurtenances, and all the property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations. (*L.* 1898, *Ch.* 660).

§ 141a. **Common council may pass ordinances**—The common council of the said city shall have the power to pass such ordinances and regulations as the said board of education may report as necessary or proper for the protection, safe-keeping, care and preservation of the school-houses, lots, sites, appurtenances and appendages, libraries and all necessary property belonging to or connected with the schools in said city, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in this charter; and all such penalties shall be collected in the same manner that the penalties for the violation of city ordinances are by law collected, and when collected shall be paid to the treasurer of the city and be subject to the order of the board of education, in the same manner as other moneys raised pursuant to this charter. (*L.* 1898, *Ch.* 660).

§ 141b. **Common council may sell school property**—The common council of said city may, upon the recommendation of the board of education hereinafter mentioned, sell any of the school-houses, lots or sites, or any other

school property now or hereafter belonging to said city, upon such terms as the said common council may deem reasonable. The proceeds of such sale shall be paid to the treasurer of the city and shall be by the said common council again expended in the purchase, repairs or improvements of other school-houses, lots, sites or school furniture, apparatus or appurtenances. (*L.* 1898, *Ch.* 660).

§ 141c. **Common council may investigate charges**—The common council may investigate any and all charges, claims or proceedings of or made against the said board of education, its officers and employees, or in any way relating to said public schools of said city, and have all the powers and authority which are conferred by law upon any committee or board which is authorized to send for persons and papers. (*L.* 1898, *Ch.* 660).

§ 141d. **Title to school property**—The title to all property, real or personal, now held by the city of Rochester for school or educational purposes, or which may be hereafter acquired for such purposes, and the title to all property, real or personal, purchased for like purposes with any school moneys, whether derived from the issue of bonds or raised by taxation, shall be vested in the city of Rochester. The said city of Rochester shall have power to take and hold any property, real or personal, devised, bequeathed or otherwise transmitted to it for the purposes of education in said city. All actions affecting any such property shall, however, be brought by or against said board of education in its corporate capacity. (*L.* 1898, *Ch.* 660).

§ 141e. **Public schools free**—The public schools shall be free to all children between the ages of five and twenty-one years, residing in the city, and all evening schools shall be free to all persons over five years of age. (*As amended L.* 1900, *Ch.* 535; *same amendment L.* 1901, *Ch.* 106).

§ 141f. **Comptroller shall approve claims**—No order shall be drawn for payment of any bills or claims against the said department until the same has been approved by the comptroller. (*As amended L.* 1900, *Ch.* 535: *same amendment L.* 1901, *Ch.* 106).

§ 2. **Repeals**—All acts or parts of acts inconsistent herewith are hereby repealed except chapter thirty-eight of the laws of eighteen hundred and ninety-eight. (*L.* 1898, *Ch.* 660).

NOTE—Said Ch. 38, L. 1898, is an amendment to § 131, sub. 6, of the Old Charter relating to the powers and duties of the board of education, and reads as follows:

§ 131. The said board shall have power and it shall be their duty:

"Subdivision 6. To contract with, to license and employ all teachers in said schools, and at their pleasure remove them; and to extend at its pleasure any training class certificate issued during the years eighteen hundred and ninety-one to eighteen hundred and ninety-five inclusive, to any graduate of a teachers' training class maintained in said city who has had continuous and successful experience in teaching in the public schools since graduation, and such certificate when so extended shall be a sufficient qualification to teach in schools of such city only."

§ 3. **When school law in effect**—This act shall take effect on and after the first day of December, eighteen hundred and ninety-eight. (*L.* 1898, *Ch.* 660).

§ 285. **"Teachers' class" in free academy**—The board of education is hereby authorized to organize a "teachers' class" in the free academy or high school of said city, which shall be entitled to an annual allowance from the "literature fund" of the state of New York, on the conditions and rules of the regents of the university, adopted for the distribution of said fund in other academies of the state in which such classes are instructed. (*L.* 1880, *Ch.* 14. See also *L.* 1895, *Ch.* 1031, *as amended L.* 1897, *Ch.* 495).

NOTE—Various special laws relating to Rochester schools (L. 1885, Ch. 27; L. 1894, Ch's. 15 and 124, L. 1898, Ch. 576; L. 1899, Ch. 300; L. 1901, Ch. 114), published in full this book, *post*. See Index.

ARTICLE VIII

DEPARTMENT OF ASSESSMENT AND TAXATION

§ 260. **Assessors and assistants**—There shall be four assessors. They shall be elected at the city election at the same time as the mayor, two for two years, and two for four years; and thereafter, at the expiration of the term of office of the two assessors chosen for that period, two successors shall be elected for the full term of four years. In case of a vacancy in the office of assessor, the mayor shall fill the vacancy by appointment for the remainder of the term. They shall appoint, to hold office during their pleasure, such assistants or subordinates as the board of estimate and apportionment shall prescribe. (*L.* 1898, *Ch.* 182).

See note as to oath of office under § 61, White Charter, this book, p. 76.

§ 261. **Powers and duties of assessors**—They shall possess all the powers conferred, be subject to all the obligations imposed, and perform all the duties appertaining to the office of assessor in the towns of the state or the office of assessor in any of the cities affected by this act, at the time when the same shall take effect. The assessment rolls shall be prepared in the same form and manner, they shall be completed at the same time and all proceedings relating to the inspection, review and correction thereof and the assessment of the property therein described for the purpose of taxation, including the publication of notices to persons affected thereby, and all other acts necessary to be performed by said assessors in order to constitute a valid and legal tax upon such property, shall be conducted in

accordance with and governed by the laws of the state appertaining to the powers and duties of the assessors in said cities in force at the time when this act shall take effect. The taxes shall be extended upon the assessment rolls by the officers and in the manner prescribed by the law in force in any city at the time of the taking effect of this act. All warrants for the collection of taxes so assessed shall be delivered to the treasurer, who shall in the collection thereof give and publish the required notices, allow the deduction authorized for prompt payment, charge all interest or percentage directed to be paid on deferred payments, take such proceedings to enforce payment by sale of the property assessed or otherwise, and perform all duties required to be performed by him or any officer by any other name in connection with the collection of taxes and the sale of property for non-payment thereof and the redemption of property from sales as is provided for in and by any or either of said laws hereinbefore referred to, applicable to any city affected hereby. In any city in which the assessments for local improvements were made at the time of the taking effect of this act by some officer, board or body other than the board of assessors, the powers and duties so exercised by such officer, board or body shall devolve upon and be exercised and performed by said assessors and in the manner prescribed by the statutes relating thereto, except as otherwise provided herein. (*As amended L.* 1900, *Ch.* 415).

§ 262. **Sufficiency of assessments**—In the assessment of any lands in the state, it is sufficient to state the name of one of the owners of such lands, if the owner or owners be residents of the city, or if they be non-residents and the ownership is unknown to the assessors, then the assessment may be designated unknown, the number of the lot and the block on which it is situated, if the same be subdivided into lots and blocks, or the number of the lot or farm lot if not so subdivided into blocks and lots, and designated upon the

city map last adopted by the common council, and also the street and number of any building thereon; but if the land be vacant or the building thereon not numbered, then the name of the street on which it fronts and a brief description of the premises shall be given. In case no inhabited building be on the land and the residence of the owner be unknown, such owner may be designated as unknown. No assessment hereafter made in said city shall be held to be invalid because the same may be made out, in terms, against owner or owners unknown, or the estate of a deceased person (naming such person), or the executor, administrator, heirs or devisees of a deceased person (naming such person), or against a company or firm name, or against a person in whom is the record title, though not the actual title of the property, or for any cause arising through ignorance or mistake as to the name of the owner or owners of the property assessed, whether individual or a corporation, provided that such property is sufficiently described on the assessment rolls to identify and indicate the particular property which it was intended to assess. Every assessment roll shall be considered as referring to the last adopted map unless it be otherwise stated therein. (*As amended L.* 1899, *Ch.* 581).

NOTE—§§ 263, 264, 265, repealed by L. 1899, Ch. 581.

NOTE—§§ 266 to 274, inclusive, omitted from White Charter as first enacted.

§ 266. **Term of assessors**—The assessors now in office who were elected by the people, shall continue in office for the remainder of the term for which they were elected. In such cases there shall be elected, at the first city election provided for in this act, two assessors for the term of four years, and thereafter at the expiration of the term of office of the assessors, two successors shall be elected for the full term of four years. In cases where the assessors now in office were appointed, there shall be elected at the first election held pursuant to this act, two assessors for the term of two years, and two for the term of four years. (*Added by L.* 1899, *Ch.* 581).

NOTE—§§ 275 to 283, and 294 to 299, inclusive, repealed by L. 1899, Ch. 581.
NOTE—§§ 284 to 293, and 300 to 307, inclusive, omitted from White Charter as first enacted.

§ 300. **Assessments, how made**—If any of the city assessors shall be interested in any improvement for which an assessment is to be made, it shall be the duty of the board of estimate and apportionment to appoint a suitable person or persons to act in the place of the assessor or assessors so interested. In all cases of assessment, the assessors shall include in the apportionment all expenses which were incident to the making of the improvement and assessment. Whenever the amount apportioned shall exceed the actual cost of the improvement, the assessors shall declare a rebate and the excess shall be refunded to the persons who paid their assessment. In case any property within the district or area of assessment is omitted from the original assessment roll, the assessors may make an additional assessment to include the property so omitted. If the amount assessed for any improvement shall be insufficient to cover the cost of the improvement, the deficiency shall be apportioned and assessed pro rata by the assessors upon the property which they shall deem benefited by the improvement and which is within the district or area of the original assessment. *(Added by L. 1899, Ch. 581).*

NOTE—§§ 308 to 312, inclusive, repealed by L. 1899, Ch. 581.
NOTE—§§ 313 to 321, inclusive, omitted from White Charter as first enacted.

§ 313. **Publication of notices**—In all cases where county and state taxes which have been levied upon real estate in any city shall remain unpaid after the time when the same should have been paid, notice of the sale of lands situate in the city, for such unpaid taxes, shall be published in the official newspapers of the city, in the same manner that is prescribed in existing laws with reference to sales of land for unpaid city taxes. Where notice of redemption from such sales for unpaid county and state taxes affecting real estate situated in any city shall be required by law to be published, the same shall be

published in the official newspapers of the city in the manner and for the time required by law. The cost of such publications shall be added to and form a part of the taxes. (*Added by L. 1899, Ch. 581*).

NOTE—§§ 322 to 330, inclusive, repealed by L. 1899, Ch. 581.

NOTE—§§ 331 to 338, inclusive, omitted from White Charter as first enacted.

The provisions of the Old Charter of the city of Rochester contain a complete system for the assessment and collection of taxes which up to and including the return of the warrant by the collector, are independent of other statutes—Matter of Veith, 165 N. Y. 204.

It is incumbent upon a taxpayer to establish conclusively that an assessment complained of is erroneous—People ex rel. Gas Co. vs. Feitner, 58 App. Div. 555.

If the taxpayer refuses to answer questions under oath as to his property the assessors are justified in refusing to reduce the assessment—People ex rel. Mercer vs. Maynard, 7 Misc. 295.

The taxing power of the legislature is absolute, and is only limited by the constitution—People vs. Fitch, 148 N. Y. 71.

A municipality to which a tax has become due and payable is a creditor of the taxpayer, and as such has the same rights under the statute of frauds as an individual creditor in case of transfers therein declared void as against creditors—Stimson vs. Wrigley, 86 N. Y. 333.

A provision of a city charter that all taxes and assessments made for city improvements shall be and remain a lien until paid, will be effectual to continue the lien until it is discharged by actual payment—Bell vs. City of New York, 60 App. Div. 578.

The tax roll when completed by the assessors forms the basis on which the tax is imposed, and the persons assessed for personal property become liable to pay the tax when levied, even though in the mean time they cease to be the owners thereof through its transfer, loss or destruction—Everson vs. City of Syracuse, 29 Hun 485.

Though a taxpayer die after the assessment by the assessors and before the levy of the tax rolls, the tax is enforcible against his executor. The tax is assessed upon the property, not against the person—In re Babcock, 115 N. Y. 450; McMahon vs. Beekman, 65 How. Pr. 427.

As between a grantor who was the owner of land at the time of the making up of the rolls, and a grantee to whom the property is conveyed prior to the levy, the grantor is liable for the tax—Rundell vs. Lakey, 40 N. Y. 513; In re Babcock, 115 N. Y. 450.

Residence of the owner within the tax district is essential under the Revised Statutes, to give jurisdiction to the assessors to make a valid assessment of personal property—Wilcox vs. City of Rochester, 129 N. Y. 247.

An assessment for personal property taxes contained in the roll of a city ward other than that in which the person assessed resides, is

Decisions relating to taxation—Continued

not invalid if such person had any notice or knowledge that he was assessed and was given an opportunity to be heard on grievance days in relation thereto —People ex rel. McHarg vs. Gaus, 169 N. Y. 19.

General city taxes assessed for general governmental purposes are personal debts and collectible from the personal property of the person taxed, independent of any lien upon his real estate—Rundell vs. Lakey, 40 N. Y. 513; Matter of Hun, 144 N. Y. 472; Smith vs. Cornell, 111 N. Y. 554; Hagner vs. Hall, 10 App. Div. 581.

For purposes of enforcement a tax constitutes a debt in judgment, and the warrant is an execution—In re I. L. C. Co. 19 App. Div. 415; Litchfield vs. McComber, 42 Barb. 288; Butts vs. Rochester, 1 Hun 598–600; Torrey vs. Willard, 55 Hun 78; Ithaca vs. Cornell, 75 Hun 425; In re Babcock, 52 Hun 142; C. T. Co. vs. N. Y. C. R. R., 110 N. Y. 250; In re Col. Ins. Co. 3 Abb. Ct. App. Dec. 239.

Moneys on deposit in a savings bank in the state of New York are exempt from taxation under sub. 14 of paragraph 4 of the Tax Law, (L. 1896, Ch. 908)—People ex rel. Hermance vs. Diederick, 158 N. Y. 414.

The supreme court has held that the corrective statute relating to taxes in the city of Rochester (L. 1903, Ch. 522) is effectual to cure the omission of the mayor's seal from the mayor's certificate—See findings of fact by Judge Parkhurst, in Leighton vs. Leighton Lea Asso., on file in Monroe county clerk's office, made April 16, 1903.

The lien of city taxes is superior to the lien acquired by a private purchaser at a tax sale for county taxes upon the same lands—City of Rochester vs. Kapell, 86 App. Div. 224.

The legislature has power to cure defects in the assessment of taxes and to legalize proceedings to collect the same if the taxes were not invalid because of a want of jurisdiction and no other constitutional right of the taxpayer has been violated. The rule is that, if the thing done or omitted and which constitutes the defect sought to be remedied, is something that the legislature might have dispensed with constitutionally or directed in the tax law, it may ratify such act or omission by a later statute—Terrel vs. Wheeler, 123 N. Y. 76; Smith vs. Buffalo, 90 Hun 118; Ensign vs. Barse, 107 N. Y. 329; Hatzung vs. City of Syracuse, 92 Hun 203; Loomis vs. City of Little Falls, 66 App. Div. 305.

The provisions of § 209 of the Old Charter of the city of Rochester do not authorize the city treasurer to refuse to accept the tender of the amount of general city taxes, with interest, less the amount of a local assessment, which had been added to such general city taxes—Hutchinson vs. City of Rochester, 92 Hun 305.

A decree judicially settling an administrator's account — [illegible] where it appears that there remains unpaid a valid tax assessed by the city of Rochester against the administrator on account of the estate, direct the payment

Decisions relating to taxation—Concluded

of the tax out of the assets of the estate before final distribution is made—Matter of Sullivan, 84 App. Div. 51.

Under § 206 of the Old Charter of the city of Rochester unpaid installments coming due either before or after the death of the owner assessed therefor, may be enforced against his personal estate in the surrogate's court, upon the judicial settlement of the accounts of the executor of such deceased owner—Matter of Elsner, 80 App. Div. 207.

The fact that the city has sold the property for unpaid installments which became due after the owner's death, and has bid in the property upon such tax sale, does not, where the title acquired by the city has not become absolute, preclude the city from enforcing payment of such installments, and of the installments which have not yet become due, from the personal estate of the deceased owner—Matter of Elsner, *supra*.

Taxation is not taking property without due process of law—People ex rel Griffin vs. Mayor of Brooklyn, 4 N. Y. 419; Town of Guilford vs. Supervisors, 13 N. Y. 145.

Special acts relating to taxation in the city of Rochester published in full in this book, *post*. See Index.

NOTE—The decisions relating to taxation generally are fully collated in "Green's Annotated Tax Law" (1902); "Cumming and Gilbert's Annotated Tax Law" (1901); and "Drake's Annotated Tax Law" (1903); See also Am. and Eng. Enc. of Law, 2d Edn., titles, "Special or Local Assessments" and "Taxation."

Old Charter

NOTE—The White Charter specifically continues existing laws governing the procedure in matters of assessments for taxes or local improvements and the taking of lands for public purposes. The portions of Titles V and VII, Old Charter, on these subjects, as they exist, follow:

§ 53. **Duties of assessors**—The assessors appointed as hereinbefore provided shall perform all the duties required of assessors in relation to the assessment of property in said city, for the purpose of levying taxes imposed by the supervisors of Monroe county, and of levying taxes and assessments imposed by the common council. (*L.* 1880, *Ch.* 14).

NOTE—As to powers and duties of assessors, see White Charter, § 261, this book, p. 184.

§ 82. **Assessment for general taxes**—All sums so directed to be raised by tax by the common council shall be assessed upon all real and personal estate, in said city, according to the valuation of the same

in the last preceding assessment rolls, which shall have been returned by the assessors of said city, and filed in the office of the clerk of said city, except as by this charter otherwise provided; but no real or personal estate, which shall be exempt from taxation or assessment by the general laws of this state, shall be liable to be assessed for the ordinary city or county taxes, but such real estate may be assessed and taxed for local improvements. All real estate shall be assessed for any city or county tax or assessment to the owner or occupant, or by any description by which it may be known and distinguished without reference to the owner or occupant. Whenever any tax or assessment exceeding ten dollars in amount has been at any time heretofore or hereafter is levied or assessed by, or by order of the common council against a person, firm, estate or corporation, and has been or is returned by a collector uncollected for want of goods and chattels, out of which to collect the same, the mayor or city attorney of said city may apply on an affidavit stating the facts aforesaid to the county judge or special county judge of the county of Monroe, and obtain an order requiring such firm, person, estate or corporation to appear before such county judge or special county judge, or before a referee named in such order and answer concerning his, their or its property. The same proceedings may, in all respects, be had as in cases of proceedings supplementary to an execution against property under the code of civil procedure, and the same costs and disbursements may be allowed against the person, firm, estate or corporation examined concerning his, their or its property, but none shall be allowed in his, their or its favor. The tax if collected, shall be paid over to the city treasurer, and the costs collected shall belong to the party instituting the proceedings, and shall be applied by him to the payment of the expenses of such proceeding. And the proceedings taken under this section

shall conform in all other respects to the course of proceedings provided for in said code of civil procedure in relation to such supplementary proceedings. (*As amended L.* 1890, *Ch.* 561).

NOTE.—As to description of lands see White Charter, § 202, this book, p. 185.

Insertion of owner's name in assessment list not essential to validity of tax.—Haight vs. Mayor, etc., 99 N. Y. 280.

Valuable commercial buildings should be assessed upon the basis of earning capacity—People ex rel. Powers vs. Kalbfleisch, 25 App. Div. 132; appeal dismissed, 150 N. Y. 678.

§ 83. **Annual assessment how made**—The annual assessment of property in said city shall be made by the assessors thereof by the fifteenth day of January in each year, who shall enter the assessment for each ward in a separate book provided for that purpose. After such assessment shall have been completed the assessors shall meet at their office to hear the allegations and objections of all persons interested in the assessments, of which at least ten days previous notice shall be given by publication in all the daily papers published in said city. At the time and place designated in said notice, and for ten consecutive days thereafter, exclusive of Sundays, the assessors shall meet and hear such allegations and objections, and the assessment books shall there be open to the examination and inspection of all parties interested, between the hours of nine and twelve in the morning and two and four in the afternoon. The assessors shall amend and correct such assessments as they shall deem proper. When completed, an oath substantially in the following form, shall be written or printed upon or attached to said rolls and each of them, and said oath shall be signed by the assessors or a majority of them and shall be sworn to before an officer authorized to administer oaths, namely: "We, the undersigned, do severally depose and swear that we have set down in

the foregoing assessment roll all the real estate situated in ward, according to our best information; and that with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, we have estimated the value of the said real estate at the sums which the majority of the assessors have decided to be the full value thereof: and also that the assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person or corporation named in such roll, over and above the amount of debts due from such persons or corporations respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief." After being sworn to as aforesaid, the assessment books shall be delivered to the clerk of the city on or before the fifteenth day of April in each year, who shall report the same to the common council of said city at its next meeting. The time for such delivery of such books to said clerk, may be extended by resolution of said common council adopted at any time before or after the said fifteenth day of April. The assessors shall make and certify a correct copy of said assessment books as they shall then exist, and including the changes, amendments and corrections to the same that may be made as hereinafter specified, and deliver the same to the supervisors of the several wards respectively, for the use of the board of supervisors of Monroe county on or before the first day of October in each year, to be by them presented to the board of supervisors as the ward rolls of the city. The time for the delivery of such books, or of either of them, to said supervisors, may be extended by resolution of said board of supervisors adopted at any time before or after the first day of October. The said board of supervisors shall pay to said assessors, for

the copy or copies for their use, in the same manner as paid to the supervisors of the several towns for the town rolls. The said assessors are hereby directed and empowered to make such additional amendments and corrections in said assessment rolls as to the names of the actual owners or occupants and values of real and personal estate therein assessed as they shall deem proper, at any time before the first day of July in each year. (*As amended L.* 1900, *Ch.* 119).

NOTE.—§ 84, repealed, L. 1894, Ch. 777.

§ 85. **Additional tax for water rents; delivery of tax rolls**—In addition to other taxes directed by law to be assessed upon the property of the city, the common council shall, in the month of April in each year, assess, for the benefit of the water works fund, three cents on each lineal foot front of each city lot located on any avenue, street, park, court, alley or lane in which the city water mains are laid and in use in all cases in which no water rents have accrued or been paid to the city of Rochester during the calendar year preceding the date of the assessment, but such assessment shall be made on one frontage only of each of said lots. As a basis for such assessment the executive board, or its successor in charge of the Rochester water works shall, on or before the first day of March, in each year, make and furnish to the city assessors a complete statement of each and every city lot situate on the streets, avenues, parks, courts, lanes and alleys in said city, in which city water mains are laid and in use, and on which lots water rents have not accrued or been paid during the preceding calendar year; said statement shall contain the name of the owner of the lot and the frontage to be assessed, or such description as is now required by law to identify the same. And also, in all cases in which water rents have accrued during the preceding calendar year aforesaid, on a city lot exceeding two hundred

feet frontage; and if said water rents shall not aggregate an amount equal to at least three cents on each lineal foot of the whole frontage of said lot, then said excess over two hundred feet shall be subject to said tax of three cents on each foot of frontage the same as if no water rates had accrued on any part of said lot. The common council shall, during the month of April in each year, assess the city taxes, including those required to be assessed by the foregoing provisions of this section, in the same manner in which the county taxes are by law to be assessed by the board of supervisors, which taxes shall be by the assessors inserted in the assessment rolls reported by the assessors as before provided, and such rolls, with taxes inserted therein, shall be delivered by said assessors to the treasurer of said city. After said assessment rolls have been confirmed by the common council it shall not be lawful for said common council to hear complaints or allegations from persons assessed thereon who may claim any exemption from taxation, in any way, under any law of the state of New York relating to the national guard or military of said state, but as to all such persons such confirmation shall be final and conclusive. (*As amended L.* 1896, *Ch.* 777).

§ 86. **Warrant of mayor to be annexed to assessment rolls**—To each of such assessment rolls so to be delivered to the treasurer of said city, as aforesaid, shall be annexed a warrant under the hand of the mayor and the seal of the city, commanding the city treasurer to collect from the several persons named in the assessment rolls, the several sums levied as taxes in the columns of such rolls, according to the provisions of this act. (*L.* 1880, *Ch.* 14).

Requirements as to hand and seal held mandatory Matter of City of Rochester vs. Ideoss, 77 App. Div. 283; affirmed, 178 N. Y. 636.

Corrective statute—L. 1903, Ch. 522.

§ 87. **When assessment rolls to be delivered to treasurer**—The said assessment rolls with the said warrants annexed, shall be delivered to the city treasurer on or before the first day of May in each year. (*As amended L.* 1896, *Ch.* 777).

§ 88. **Collection of taxes by city treasurer**—The city treasurer shall then proceed to collect and receive said taxes from the several persons named in the said assessment rolls in the manner hereinafter mentioned, and shall immediately after receiving such rolls and warrants, give public notice by the advertisement in two of the public newspapers printed in the city of Rochester, that all persons named in said rolls are required to pay their taxes to him at his office, on or before the fifteenth day of the following September, and stating the amounts to be added if payment shall not be made. (*As amended L.* 1896, *Ch.* 777).

§ 89. **Rates of interest collectible**—The city treasurer shall receive the amount of any tax levied in the assessment rolls during the month of May, and on all amounts not paid on or before the last day of May succeeding the levying of such tax, he shall receive for the contingent fund of said city, the following additions as charges for collection, namely: If the same be paid after the last day of May and on or before the last day of June, then next, he shall charge and receive an addition of one per centum; if paid after the last day of June and on or before the last day of July, then next, an addition of two per centum; if paid after the last day of July and on or before the fifteenth day of August, then next, an addition of three per centum; if paid after the fifteenth day and on or before the last day of said month of August, then an addition of four per centum; if paid on or after the first day of the month of September, then next, and on or before the fifteenth day of the same month an addition of five per centum; and if paid at any time after

the fifteenth day of September, such addition of five per centum, and also, interest from that day, at the rate of twelve per centum per annum. (*As amended L. 1896, Ch. 777*).

§ 90. **Publication of notices**—The said city treasurer shall also, immediately after the said last day of August, give public notice in all of the daily newspapers of the said city, to be published in such papers for ten days, notifying all persons who shall have omitted to pay their taxes to pay the same to him at his office, on or before the fifteenth day of the said month of September. (*As amended L. 1896, Ch. 777*).

§ 91. **Collection of taxes**—It shall be the duty of the city treasurer upon all taxes remaining unpaid on the fifteenth day of October next succeeding the completion of the said assessment rolls, to issue as many warrants as he shall deem proper under his hand, and directed to any person whom he may see fit to appoint a collector of the taxes specified in such warrant, commanding such person as such collector, to levy the amount of said tax, and an additional amount of five per centum, except that in no case is the amount so added to be less than twenty-five cents, and, also interest at the rate of twelve per centum per annum from the preceding fifteenth day of September, and the fees of said collector by distress and sale of goods and chattels of the person against whom the said warrants shall be issued, or of any goods and chattels in his possession, wheresoever the same shall be found within said city, and to pay the same to the city treasurer, and return such warrant within twenty days after the date thereof; and no claim of property to be made to such goods and chattels so found in possession of the said party, shall be available to prevent a sale. After the return of any warrant, the treasurer, if he deem expedient, or if so directed by the common council, may issue a second or subsequent warrant for the taxes still remaining unpaid, with said percentage,

Old Charter

Collection of taxes—Continued

interest and fees. Every collector shall hold his appointment during the pleasure of the treasurer, and may at any time be removed or suspended by him; and the treasurer and his sureties shall be liable for any collector, and for all moneys that may be collected or received by him. No warrant shall be delivered to any collector until he shall have executed and deposited with the treasurer, a bond to the city of Rochester, with two or more sureties, approved by such treasurer, and acknowledged in the manner required for the recording of conveyances of real estate, and conditioned for the faithful performance of his duties as a collector of the taxes specified in such warrant, and for the faithful accounting and paying over to the treasurer of all moneys that he may collect or receive under such warrant. If any collector shall fail to return any warrant issued to him, as therein required, or shall fail to pay over to said treasurer all moneys collected, or received by him, or shall fail to render a full and true account thereof, the supreme court, or any justice thereof, on the application of the treasurer, or of the city of Rochester, shall have jurisdiction on proof, by affidavit or otherwise, summarily to enforce such return, payment, or accounting, or all, as the case may be, by attachment and proceedings thereon, in the same manner as if such collector were a sheriff or officer of that court. The fees of such collector shall be estimated only on the moneys collected by him, and where several sums are assessed to the same person or persons, on the same list, such sums shall be deemed to be one tax for the purpose of estimating collectors' fees. The interest and percentage other than collectors' fees shall be added to the contingent fund of the city. The said treasurer, immediately after receiving the bond of any collector shall file the same in the office of the clerk of Monroe county, and the same shall be a lien upon the real estate

of any person executing the same situate in said county. Such collector shall have full power and authority to execute said warrant in any part of the city, and if any such collector shall neglect or refuse to pay over any money collected by him, he shall be deemed guilty of a misdemeanor. (*As amended L. 1896, Ch. 777*).

§ 92. **Collectors' sales and notice**—The said collectors shall give public notice of the time and place of sale of the property to be sold, at least six days previous to the sale, by advertisement to be posted up in at least three public places, of which the outer door of the court-house shall be one. All sales by virtue of this provision shall be by public auction from the steps in front of the court-house. (*L. 1880, Ch. 14*).

§ 93. **Disposition of surplus on collectors' sales**—If the property distrained shall be sold for more than the amount of the tax, percentage, interest, and the costs, charges, and expenses of such distress and sale, the surplus shall be returned to the person in whose possession such property was when distress was made, if no claim be made to such surplus by any other person; if any other person shall claim such surplus on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus money shall be paid by the collector into the city treasury, there to be retained as a special deposit, until the rights of the parties shall be determined by due course of law. (*L. 1880, Ch. 14*).

§ 94. **Time of sale** On the second Thursday of December in each year, the city treasurer shall cause to be exposed for sale, as hereafter provided, all real estate charged with

any tax or assessment which shall have been due and unpaid more than thirty days previous to the said second Thursday in December. (*As amended L. 1896, Ch. 777*).

§ 95. **Notice of sale**—The city treasurer shall cause a notice of the time and place of such sale to be published in all the daily newspapers published in said city at least ten days previous to such sale; and he shall also cause to be published in one or more of said daily papers on some day not more than twenty, nor less than ten days previous to such sale, a list of the several parcels of real estate so to be sold, describing therein each parcel of real estate in the same manner substantially as the same is described in the assessment rolls in which the said tax or assessment is imposed thereon, together with the name of the person to whom each parcel is assessed and the amount of the tax or assessment thereon. (*L. 1880, Ch. 14*).

§ 96. **City treasurer to conduct sale; expenses allowed to city**—It shall be the duty of the city treasurer to conduct all the proceedings and render all the services necessary to perfect the sale and transfer of real estate in said city where the same shall be sold or advertised for sale for the non-payment of any assessment imposed thereon by the common council, and for such services so rendered by the city treasurer, including the expense of advertising such real estate, the corporation shall be entitled to have fifty cents for each parcel of land so ordered to be sold, in case the sale thereof shall be stopped by payment after advertisement, and one dollar and fifty cents for each parcel that shall be actually sold, which fees shall be paid into the city treasury and carried to the contingent fund. (*L. 1885, Ch. 14*).

§ 97. **Manner of selling; certificate of sale**—If such tax or assessment and the

percentage, interest, allowance and expense aforesaid be not paid by the said second Thursday of December, the city treasurer shall, at the time and place appointed in the notices required to be given as aforesaid, or on some day immediately thereafter to which said sale may be adjourned, proceed to sell the said several parcels of real estate for the shortest time any bidder will take such premises and pay the said tax or assessment, with said charges and expenses; and on such sale he shall execute to the bidder a certificate of sale, in which the property purchased shall be described, the aggregate amount of tax or assessment and said charges and expenses, and the time for which the premises were purchased shall be specified; also the time when the purchaser will be entitled to receive the lease hereinafter mentioned. The amount added to such tax or assessment for fees shall be carried to the contingent fund. (*As amended L.* 1896, *Ch.* 777).

Act validating tax sales—L. 1895, Ch. 580. Published in full, this book, *post*. See Index.

Sale of lands for unpaid taxes—Cooley on Taxation, 3d Edn., (1903), pp. 910-1022.

§ 98. **When property is struck off to city**—If at any such sale no bid to the amount of the tax thereon and expenses of sale shall be made for any such parcel of land, the same shall be struck off to the city, and the treasurer shall make a memorandum of the fact that the land was so struck off to the city in a book to be kept for that purpose. (*L.* 1880, *Ch.* 143.

§ 99. **Common council may authorize treasurer to bid**—The treasurer of said city may be authorized, by an order of the common council, to bid for and in the name of the corporation of the said city upon any lands offered for sale at public auction, upon which the said corporation may have any claim or lien. (*L.* 1880, *Ch.* 143.

§ 100. **Redemption of property sold for taxes**— Any owner or claimant of the premises so sold for any tax or assessment may, within two years after such sale, redeem the same by paying to such purchaser, his representatives or assigns, or into the city treasury for his use, the amount so paid by him, with the addition of twelve per centum per annum, or at that rate, on such amount, and on such payment being made the right and title of such purchaser shall absolutely cease and determine. (*L.* 1880, *Ch.* 14).

§ 101. **Notice to redeem by holder of tax certificate; contents**—Any holder of any certificate of lands sold for city taxes or assessments shall, within one year after the expiration of the period of redemption provided for by the preceding section, cause to be served upon the owner of such lands a notice of such sale, signed by the person claiming such premises under such sale, his representative or agent, and specifying the amount of the tax or assessment and charges at the time of such sale, and the time for which such premises were bid off, and that the owner is required to redeem the same, within thirty days, and any person making redemption after service of said notice, shall, within the time therein provided, pay the amount for which the land was sold, with the said addition of twelve per cent. per annum, into the city treasury for the use of the person who shall hold said certificate. (*L.* 1880, *Ch.* 14).

§ 102. **Service of notice to redeem**— The notice required by the preceding section shall be served on the owner of such land if he live in Rochester, personally, or by leaving at his residence. If such owner does not live in Rochester, but has an agent living in said city, whose appointment is in writing and his name entered in a book to be kept by the city clerk for that purpose, then such notice shall be

served on such agent, personally, or at his residence. If such non-resident owner does not have such agent, then such notice may be served on any tenant in possession of said premises, and a copy thereof shall also be sent by mail addressed to such owner at his residence, if the same is known or can be ascertained by reasonable diligence; and if there be no tenant, service by mail as aforesaid shall be sufficient. If there be no occupant and the residence of such owner is not known and cannot be ascertained by reasonable diligence, or if the owner of such lands be unknown, then such notice shall be served by publishing the same once a week for six successive weeks in at least two of the daily city papers, and the cost of such advertisement shall be added to the amount already accrued upon his certificate. (*L.* 1880, *Ch.* 14).

§ 103. **Notice to redeem**—It shall be the duty of the treasurer to deliver to the attorney of said city within one month after the expiration of two years from the time any lands have been sold for any tax or assessment, where the same have been struck off to said city, a list of all such lands, with the names of the owners and a description thereof, as the same is described on the assessment roll, containing the tax for which the same is sold. It shall be the duty of the attorney to cause a notice to be served upon all owners of land so purchased by said city, in the same form and manner as specified in the two last preceding sections. (*L.* 1880, *Ch.* 14).

Note—§ 103 changed by White Charter, § [illegible] City treasurer now gives the required notices.

Purchaser at tax sale cannot recover money for a void tax from city—Cottin vs. Brooklyn, 146 N. Y. 150.

Private purchaser does not pay the tax—Clementi vs. Jackson, 99 N. Y. 391.

Where assessment is void sales cannot be validated—Cromwell vs. McLean, 123 N. Y. 474.

§ 104. **Mayor's certificate of failure to redeem lands sold to city; treasurer's certificate of discharge of lien; foreclosure of equity of redemption; jurisdiction of municipal court; practice; costs**— Whenever any lands in said city shall have been sold for taxes or assessments, and bid in by, or struck off to, said city, and notice to redeem shall have been served, as provided in the last section, for more than thirty days, and such lands have not been redeemed, as before provided, the mayor of said city shall execute a certificate of the fact of such sale having been made and the lands struck off to the city, and that the same have not been redeemed which certificate shall be acknowledged as deeds to be entitled to be recorded, and shall be recorded in the Monroe county clerk's office. Such certificate, or the record thereof, or a copy of such record, duly authenticated, shall in all courts and places, be *prima facie* evidence that the tax or assessment was legally imposed, and of the regularity and legality of all proceedings prior to such sale, and of such sale, and that notice has been duly given to redeem, and that such lands have not been redeemed. Upon the recording of such certificate, the said city, or its assigns, shall acquire an absolute title to such lands, in fee, with the right to immediate possession, and may enjoy and hold such lands free and clear from all claim or demand of any owner thereof, or any person having any lien thereon, or interest therein, but the equity of redemption in said lands struck off to the city shall only be barred as hereinafter provided. At any time after such certificate is executed and recorded, and the tax or assessment mentioned therein has been at any time thereafter paid, the treasurer of said city may execute, acknowledge and deliver to the owner of such lands, so sold, a certificate to the effect that such tax or assessment has been paid, and upon the recording of the same in the Monroe county clerk's office the said clerk shall

discharge the former certificate of record in his office, by a proper entry upon the page containing such record, the same as in cases of discharge of real estate mortgages by him. At any time after such certificate is executed, the equity of redemption of all persons having any lien or interest in said lands may be foreclosed by an action to be brought by said city, in the supreme court, county court of Monroe county, or the municipal court of said city, which are hereby given jurisdiction over the same, and in which action the same proceedings shall be had, as nearly as may be, as on the foreclosure of real estate mortgages, and judgment of strict foreclosure, or of foreclosure and sale, may be had therein, as the court may direct. The municipal court of said city is hereby declared to be a court of record for the purposes of foreclosure of the equity of redemption of all lands sold for taxes or assessments, and bid in by, or struck off to, said city, as herein provided. Actions in said municipal court shall be commenced by the service of the summons, or summons and complaint, either personally or by advertisement, or otherwise, as is provided in relation to actions in courts of record by the code of civil procedure, and the service thereof may be made in any part of this state, if personal, and outside of the state if by advertisement, and the process, pleadings, proceedings and practice therein shall conform, as near as may be, to actions for the foreclosure of mortgages in the supreme court, except as herein otherwise provided, and all costs and disbursements shall be allowed by said court, and taxed and adjusted by the clerk of Monroe county, and entered into and become a part of the judgment, and article nine of title one of chapter fourteen of the code of civil procedure, shall apply to actions commenced under this act, and all pleadings, papers, orders, reports, process and judgment-rolls, and decrees, shall be filed, docketed and entered in said clerk's office, and such judgments and

Old Charter

Tax foreclosures—Continued

decrees shall have the same force and effect as judgments of the supreme court, and the appeal from any such judgment and decree shall be to the supreme court at general term, in the first instance, and in the manner now provided for appeals by the code of civil procedure, and the said municipal court shall acquire jurisdiction in the same manner, and to the same extent, as courts of record in actions for the foreclosure of mortgages, but in no action for such foreclosure, where judgment is taken by default, shall there be costs taxed to exceed ten dollars, exclusive of disbursements, except when the amount of the tax or assessments for which such certificate was given, including interest, shall exceed twenty-five dollars, in which case the plaintiff shall be allowed to tax an additional sum, as costs, at the rate of ten per centum, and the expenses thereof. When such action, however, is settled before judgment, there shall be allowed as costs to the plaintiff only one-half of the above prescribed sum and rates. In an action in said municipal court, where a defense, by answer or demurrer, shall be interposed, the same may be brought to trial by either party, on five days' notice, and, in addition to the disbursements, costs shall be allowed therein to the prevailing party, as follows: To the plaintiff, for all proceedings before trial, ten dollars; to the defendant, for all proceedings before trial, five dollars; to either party for a trial of an issue of law, five dollars; for trial of an issue of fact, ten dollars. In addition to the above, there shall be allowed to the plaintiff, if judgment is rendered or decreed in its favor, five per centum on the amount found due, and for which judgment is rendered, or a decree made, as additional costs. It shall be the duty of the city attorney, after the expiration of the time for redemption, to bring actions for the foreclosure of all liens for taxes and assessments bid off by, or struck off

to, the said city. Where an action commenced under this section has been settled, and the tax lien paid, an order may be made and entered in said Monroe county clerk's office, directing the said county clerk to make a suitable and proper entry upon the original record thereof in his office of said mayor's certificate, and upon such record being so made, the premises mentioned therein shall be discharged of such tax lien. The provisions of this section shall apply to all lands heretofore bid in by, or struck off to, said city. (*As amended L.* 1890, *Ch.* 561).

Inferior local courts shall not be made courts of record nor have equity jurisdiction—State Constitution, Art. VI, § 18.

§ 105. **Judgment creditor or mortgagee may redeem**—Any judgment creditor or mortgagee having a lien on the premises sold for any tax or assessment under the provisions of this charter may redeem the same within the same time, and on the same terms as the owner thereof as hereinbefore prescribed. The right of any such judgment creditor or mortgagee to redeem such lands shall only be cut off by service of notice on, or for him, in the same manner as provided hereinbefore as to the owner, or where his equity of redemption is foreclosed, as provided in this charter. (*L.* 1880, *Ch.* 14).

§ 106. **Lien of mortgagee or judgment creditor**—Every such mortgagee or judgment creditor shall have a lien on the premises redeemed by him, by virtue of this act, for the amount necessarily paid by him to effect such redemption, with the interest which may thereafter accrue thereon, in like manner as if the same had been included in his mortgage or judgment, and may enforce the same in the same manner. (*L.* 1880, *Ch.* 14).

§ 107. **Definition of mortgagee**—The term "mortgagee," shall be construed to include the personal representatives of such mort-

gagee and assignees whose assignments shall be duly recorded, and their personal representatives. (*L.* 1880, *Ch.* 14).

§ 108. **Proceedings to acquire title to lands sold for taxes to parties other than city**—An affidavit of the service of the notice required by the preceding sections of this title, in order to determine the time of redemption of such lands, specifying the time of such service, and taken before an officer authorized to take affidavits to be read in courts of record, shall be filed with the clerk of the city within ten days after such service, and the said affidavit shall be presumptive evidence of the facts contained therein. And the clerk shall keep a carefully indexed record of the same. If the said lands so sold in the manner herein provided shall not be redeemed within the time and in the manner in this title hereinbefore prescribed, the holder of such certificate shall, at the expiration of such time, be entitled to a lease of said premises for the term for which the same were bid off, which term shall commence two years from the time of the sale of said lands; said lease to be given by the mayor, or other officer legally discharging the office of mayor, under the corporate seal of the said city, on production to him of a certificate of the city clerk that an affidavit was filed as by the next preceding section provided, and a certificate of the city treasurer, that the money has not been paid to redeem said lands, which lease, or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence in all courts and places that such tax or assessment was legally imposed, and of the regularity and correctness of such sale and of all proceedings prior thereto, and that notice has been given to redeem, and that such lands have not been redeemed; and the said lessee, his heirs or assigns shall have, hold and enjoy the said premises during the term for which the same were granted to him, free and clear from all

claim of any owner or occupant of the same, or of any person having any lien thereon or interest therein, but subject to any taxes or assessments that may be charged thereon, during the said term; and at the expiration of such term, such lessee, his heirs or assigns, may remove any building or fixtures that may have been erected on the said premises during the said term. But no lease or conveyance of such lands, or any part thereof, shall be executed by the mayor, or any person discharging the duties of the office of mayor, until all city taxes and assessments upon such lands shall have been paid. (*L.* 1880, *Ch.* 14).

§ 109. **Proceedings of council to collect taxes on lands imperfectly described; power of council to correct taxes or assessments**—Whenever the said common council shall discover that any lands on which any tax or assessment remains unpaid have been so imperfectly or erroneously described that the same cannot, in their opinion, be located with certainty, or that a sale thereof would not convey to a purchaser a valid title to the lands intended to be charged with such tax or assessment, by reason of the misdescription thereof, the said common council shall cause an accurate description of the lands intended to be charged with such tax or assessment to be annexed to the annual assessment roll for the general expenses of the said city, and shall charge the said land with the amount of such taxes or assessments incurred, with the interest thereon, from the time the same ought to have been paid, specifying the purpose for which the same was originally assessed, and the time when the same was returned for non-payment; and the amount so charged shall be collected in the same manner and the same proceedings shall be had in case of non-payment of the same, as in relation to taxes for the general expenses of the said city. The power conferred by this section may be exercised in respect to

any lands heretofore returned to the city treasurer, and shall extend to all lands embraced in the terms of this section, whether the same may have been sold under such imperfect description or not; and in case any mistake or error has been or shall be committed in any of the proceedings in making any tax or assessment upon any property, real or personal, the common council shall have power to correct such tax or assessment, or to remit the same, if uncollected, and to refund the same, if collected; and the amount or aggregate of the sums so remitted or refunded shall be added to the gross amount of taxes to be assessed and collected the next succeeding year, and shall be collected with the taxes for the general expenses of the city, and in the same manner. (*L.* 1880, *Ch.* 14).

Special Note—§§ 110, 111, 112, 113, 114, 115, seem to be out of order here as they pertain specially to the department of finance; but they are left at this place in the same position they occupy in Title V, Old Charter.

§ 110. **Renewal of bonds; exchange of water works bonds**—It shall be lawful for the said city to renew and extend the period for payment of the bonds or certificates outstanding against the said city, and which constitute the funded debt of said city, by issuing new bonds and certificates therefor, but such bonds and certificates shall recite or specify therein the bonds or certificates for the renewal of which such bonds or certificates shall be issued. The common council shall have power to issue in exchange for the water works bonds of said city, heretofore authorized and from time to time outstanding, registered bonds of the said city, for the same amount, payable at the same time and with the same rate of interest, under such regulations as the common council may prescribe; provided, however, that no new bond shall be signed by any officer until the bond for which it is to be exchanged

shall be canceled, with the certificate of the city treasurer or other city officer, and either deposited in his office or disposed of as the common council may direct. (*L.* 1880, *Ch.* 14).

§ 111. **General sinking fund** — The treasurer of the city of Rochester shall place to the credit of a fund to be known as the general sinking fund one per centum of the total amount of the park bonds directed to be raised pursuant to section eighteen of chapter one hundred and ninety-three of the laws of eighteen hundred and eighty-eight; the difference between the amount received from the New York, Lake Erie and Western Railroad Company, and the amount necessary to pay any bonds of the Genesee Valley Railroad and the interest thereon; the amount received as rent for the arsenal site; the percentage of the gross receipts of the Rochester Railway Company contracted to be paid to the city; all surplus receipts for water rents after the payment of operating expenses, salaries, repairs, maintenance or extension of said works, interest upon the water bonds issued for the construction of said works or for the further extension of the same, also such penalties as may be collected for violations of the regulations of the executive board governing the use of the city water supply and any moneys now in his possession received from any of the above sources not otherwise appropriated, and the amount so credited and the additions and accretions thereto shall constitute a fund for the redemption of the city's bonded debt and for that purpose only. The mayor of said city shall, on or before the first day of June, eighteen hundred and ninety-four, and every third year thereafter appoint a citizen of said city, other than a city officer or employee, who, with the mayor, treasurer and president of the common council of said city, shall constitute the board of trustees of said sinking fund, which shall be a body corporate, and shall have the care and

General sinking fund—Continued

direction of said sinking fund, subject to the ordinances of the common council. Said trustees are hereby authorized and empowered to pay and redeem any portion of the bonded debt now or hereafter a charge upon said city as it may mature (for the redemption of which no special provision of law exists except the bonds issued pursuant to chapter one hundred and ninety-three of the laws of eighteen hundred and eighty-eight) and also such bonds as may be surrendered by the holders thereof before maturity whenever they may deem it to be for the interest of said city so to do. Said sinking fund shall be used solely in the redemption and payment of the city's bonded debt, and when there are no such city obligations falling due upon which the same can be applied, they may be used in the purchase of any of the city's bonds, not due, or any city bonds to be issued, or may be invested in such other manner as such board of trustees may elect, or may be deposited in such banks, at the highest rate of interest obtainable, as shall be selected by said trustees, until such bonds may fall due, to the payment of which they can be applied, and whenever any of the bonds of said city are about to be issued, the trustees of said sinking fund shall, at their option, be permitted to purchase so much or so many of them as they may desire at their par value, and shall hold the same as a part of said sinking fund. Said trustees shall, at their last meeting in each fiscal year, present to the common council a detailed statement of the receipts, disbursements and investments made during the fiscal year then ending, pursuant to the provisions of this act; the several securities and investments held (whether cancelled or not), stating the law under and the purpose for which the same were respectively issued, giving their respective amounts, date of issue, and maturity, and the numbers of the bonds or securities and the rate of interest payable

thereon, together with any other proper description of the same; the amount of interest received on such deposit; what city bonds maturing during the year then ending have been paid out of said sinking fund; the several amounts in which city bonds have been issued; the date of their issue; the rate of interest payable; the times when the interest and principal of the respective bonds fall due, and also the authority under which and the object or purpose for which they were respectively issued. When, by any act authorizing the creation of any part of the present funded debts, any property or revenues of the said city were pledged or appropriated to the payment of any such funded debt, such property or revenues shall continue to be so pledged and appropriated to the payment of the bonds or certificates which shall, by virtue of this act, be substituted for such part or parts of such funded debt. (*As amended L.* 1894, *Ch.* 520).

Note—See White Charter, §§ 26 and 69, this book, pp. 38 and 75 as to creation of funded debts and the present custody of sinking fund.

§ 112. **Warrants drawn on treasurer**—No money shall be drawn from the city treasury unless it shall have been previously appropriated to the purpose for which it shall be drawn, and all ordinances, resolutions and orders directing the payment of money shall specify the object and purpose of such payment, and the particular fund from which payment is to be made, and the same, with the approval of the mayor, shall be certified by the clerk of the common council to the city treasurer, before any payment shall be made by him, except as otherwise expressly provided. (*L.* 1880, *Ch.* 14).

Note—§§ 112, 113, 114 and 115, Old Charter, here printed, are probably superseded by the provisions of the White Charter, §§ 79–86, this book, pp. 75–77.

§ 113. **Deposits of city money by treasurer**—All moneys received by the treasurer belonging to the city shall be deposited

in one or more of the banks of the city, to be designated by the common council, and the treasurer shall keep a bank book with every bank in which any money of the city shall be deposited, in which shall be entered all sums received by such bank to the credit of the treasurer, and all sums paid out on his checks and drafts, which books shall be written up, and the balance stated on the last day of each week, and at any other time when the mayor shall direct. And every member of the common council shall be entitled, during usual banking hours, to inspect the account of the treasurer with any bank in which deposits of money are made. The common council shall always have the right to order the deposits transferred to, and made in, any other bank or banks. (*L.* 1880, *Ch.* 14).

§ 114. **Treasurer's check must specify fund**—Every check drawn by the city treasurer, and countersigned as hereinafter provided, shall specify the particular fund out of which the payment by such check is to be made. (*L.* 1880, *Ch.* 14).

§ 115. **Treasurer's check must be countersigned**—No money placed to the credit of the treasurer in any bank shall be drawn out unless by a check signed by the treasurer and countersigned by the clerk, or by such other officer or person as the common council shall appoint, or as is by this charter designated for that purpose; of which appointment notice shall be given to the banks in which such deposits shall be made, and a copy of this section shall be delivered to the cashier of every such bank, before making deposits therein. (*L.* 1880, *Ch.* 14).

§ 116. **Supervisors to annex warrant to assessment rolls; county treasurer to enforce collection**—After the board of supervisors of the county of Monroe shall have equalized and corrected the assessment rolls

of the city of Rochester, and shall have inserted therein the county taxes levied and assessed by them, they shall annex to each roll a warrant under the hands and seals of the chairman and clerk of the board of supervisors, commanding the treasurer of the county of Monroe to collect from the several persons named in said rolls the sums mentioned in the last column of each roll opposite their respective names, and authorizing the said treasurer, in case any person named in the roll shall refuse or neglect to pay his taxes before the fifteenth day of April next ensuing, to levy the same by distress and sale of goods and chattels of such person, and they shall, on or before the fifteenth day of January next ensuing, deliver the said rolls to said county treasurer. (*L.* 1880, *Ch.* 14).

Act in relation to the collection of taxes in Monroe county, L. 1884, Ch. 107, published in full this book, *post*. See Index.

§ 117. **Notice to pay county taxes; interest**—Immediately after receiving such rolls and warrants, the county treasurer shall give public notice, by advertisement, in all the daily newspapers printed in the city of Rochester, that all persons named in said rolls are required to pay their taxes to him at his office before the fifteenth day of April then next, and stating the amount to be added if payments shall be delayed; the said treasurer shall receive the amount of any tax levied on said assessment rolls during the month of January and before the first day of February then next, without any addition thereto; if the same shall be paid on or after the first day of February and before the fifteenth day of February next succeeding the levying of said tax, he shall charge and receive an addition of one per cent.; if paid on or after the fifteenth day of February and before the first day of March then next, an addition of two per cent.; if paid on or after the first day of March and before the fifteenth

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day thereof, an addition of three per centum; if paid on or after the fifteenth day of March and before the first day of April then next, an addition of four per cent.; if paid on or after the fifteenth day of March and before the first day of April then next, an addition of four per cent.; if paid on or after the first day of April and before the fifteenth day of April then next, an addition of five per cent. (*L.* 1880, *Ch.* 14).

§ 118. **Publication of notice to persons omitting to pay county taxes**— The said county treasurer shall also, immediately after the said first day of April, give public notice in two of the public newspapers of the said city, to be published in such papers ten days, notifying all persons who shall have omitted to pay their taxes, to pay the same to him at his office before the fifteenth day of said month, and that in default thereof a warrant will be issued for the collection thereof according to law. (*L.* 1880, *Ch.* 14).

§ 119. **County treasurer to issue warrants to collectors; enforcement thereof; appointment and removal of collectors; bonds; attachment against collectors; misdemeanor**—It shall be the duty of the said county treasurer, upon all taxes so remaining unpaid on the fifteenth day of April next succeeding the completion of the said assessment rolls, to issue so many warrants as he shall deem proper, under his hand, each directed to any person whom he may see fit to appoint as collector of the taxes specified in such warrant, commanding such person, as such collector, to levy the amount of said tax, and an additional amount of five per cent., and also interest at the rate of twelve per cent. per annum from said fifteenth day of April, besides the fees of such collector, by distress and sale of goods and chattels of the persons against

whom the said warrants shall be issued, or of any goods and chattels in his possession, wheresoever the same shall be found within said county, and to pay the same to the said county treasurer and return such warrant within twenty days after the date thereof; and no claim of property to be made to such goods and chattels so found in the possession of the said party shall be available to prevent a sale. After the return of any warrant, the county treasurer, if he deem expedient, may issue a second or subsequent warrant for the taxes still remaining unpaid, with such percentage and interest and fees. Every collector shall hold his appointment during the pleasure of the county treasurer, and may, at any time, be removed or suspended by him, and the county treasurer and his sureties shall be liable for any collector and for all money that may be collected or received by him. No warrant shall be delivered to any collector until he shall have executed and deposited with the county treasurer a bond to the said treasurer, with two or more sureties, approved by said treasurer, and acknowledged in the manner required for the recording of conveyances of real estate, and conditioned for the faithful performance of his duties as a collector of the taxes specified in such warrant, and for the faithful accounting and paying over to the treasurer of all moneys that he may collect or receive under such warrant. If any collector shall fail to return any warrant issued to him, as herein required, or shall fail to pay over to said treasurer all money collected or received by him, or shall fail to render a full and true account thereof, the supreme court, or any justice thereof, shall have jurisdiction, on proof by affidavit or otherwise, summarily to enforce such return, payment or accounting, or all, as the case may be, by attachment and proceedings thereon, in the same manner as if such collector was a sheriff or officer of that court; the interest and additional percentage shall be

paid to the county treasurer with the tax, and shall be added to the contingent fund of said county. The said treasurer, immediately after receiving the bond of any collector, shall file the same in the office of the clerk of Monroe county, and the same shall be a lien upon the real estate of any person executing the same, situated in said county; said collectors shall have full power and authority to execute such warrants in any part of the county. If any such collector shall neglect and refuse to pay over any money collected by him, he shall be deemed guilty of a misdemeanor. (*L.* 1880, *Ch.* 14).

§ 120. **Collectors' sales and notices**—The said collectors shall give a public notice of the time and place of sale of the property to be sold, at least six days previous to the sale, by advertisement to be posted up in at least three public places in the ward or town where such sale shall be made. The sale shall be by public auction. (*L.* 1880, *Ch.* 14).

§ 121. **Disposition of surplus on collectors' sales**—If the property distrained shall be sold for more than the amount of the tax and percentage and interest, and the cost of such distress and sale, the surplus shall be returned to the person in whose possession such property was when distress was made, if no claim be made to such surplus by any other person; if any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus money shall be paid by the collector into the county treasury, there to be retained as a special deposit until the rights of the parties shall be determined by due course of law. (*L.* 1880, *Ch.* 14).

§ 122. **Sale of land for county taxes.** All lands upon which the said county taxes shall remain unpaid on the first day of June shall be liable to be sold for the taxes thereon in the following August, as provided by "An act to authorize the treasurer of Monroe county to sell property for unpaid taxes," passed April sixth, eighteen hundred and seventy-seven. (*L.* 1880, *Ch.* 14).

NOTE—The above § 122 was probably repealed by L. 1884, Ch. 107, "An act in relation to the collection of taxes in Monroe county." Published in full, this book, *post*. See Index.

§ 170. **Payment of public improvements**—Whenever by order of the common council any new street or alley shall be laid out, opened or worked in said city, or any sewer, tunnel, drain, vault, dike, levee, embankment or bridge shall be declared to be a public necessity or extended to or beyond the city limits, or any other public improvement is to be made, it shall be the duty of the common council to determine what portion, if any, of the expense thereof ought to be paid from the public treasury, and what portion, if any, ought to be paid by local assessment, and to direct that the whole expense to be paid by local assessment be assessed upon all the lots and parcels of land to be benefited thereby in proportion to the benefit which each will derive therefrom. The common council may maintain, improve, embellish as it may deem advisable, and protect any public park, street, square or area in said city, and grade, sewer and pave the streets and alleys thereof and make, grade and improve sidewalks about the same or any part thereof. And they may cause the whole expense thereof to be assessed upon all the lots and parcels of land where the streets, parks, squares or areas are situated in proportion to the benefit which each lot or parcel will derive therefrom. (*As amended L.* 1903, *Ch.* 394).

See White Charter, §§ 141, 142 and 143, this book, pp. 156, 157 and 158.

Discretion of council in making public improvements not to be enjoined—Bell vs. City of Rochester, 61 St. Rep. 721.

Effect of reconsidering an ordinance for a local improvement—Ashton et al. vs. City of Rochester, 133 N. Y. 192.

Common council cannot exempt lands of railroad within limits of prescribed territory—(East Main street bridge case) Joslyn vs. City of Rochester, opinion by Nash, J., Equity; affirmed, 66 App. Div. 622.

Common council cannot assess entire expense on a railroad—(Bronson avenue bridge case) People ex rel. W. N. Y. & P. R. R. vs. Adams, 88 Hun 122; affirmed, 147 N. Y. 722.

When owners of property situate outside city limits petition city to make improvement and agree to pay share of expense, and thereafter, and before improvement was completed, the boundaries of the city were extended to include the said property of petitioners, held, that such property might be assessed for a proportionate share of the expense even though, in the meantime, the ownership had changed—Matter of Hollister et al., opinion by Nash, J., Equity, Misc.

§ 171. **Improvement paid by local assessment how ordered; patented improvements**—The common council shall not open or widen any street or alley, or make or ordain any work or improvement, the expense whereof is to be defrayed in whole or in part by a local assessment, except upon a petition of a majority of the owners of property to be assessed therefor, unless three-fourths of all the members elected to said common council vote therefor, after allegations have been heard. No improvement which shall be covered by letters patent shall be adopted, except upon the petition of two-thirds of all the owners of property to be assessed therefor. (*L.* 1880, *Ch.* 14).

See White Charter § 125, this book, p. 103.

Change of grade without compensation or liability—Lynch vs. New York, 76 N. Y. 60; Heisler vs. New York, 104 N. Y. 68; Moore vs. City of Albany, 98 N. Y. 407; Conklin vs. N. Y. O. & W. Ry. Co., 102 N. Y. 107.

§ 172. **First ordinance for improvement; publication of notice thereof; allegations; amendments; final ordinance; supplemental ordinance for deficiency; bids to be advertised for; bond accompanying same; opening bids; letting contract; bond accompanying contract; guarding work**—Before the common council shall determine to make any such public improvement, they shall cause an estimate thereof to be made, and shall, by an entry in their minutes, describe the portion of the city which they deem proper to be assessed for the expense of such improvement. In case where the taking of land or the acquirement of a right or easement therein is necessary, it shall not be necessary to include the damages and charges therefor in the estimated expense. A notice shall be published daily in at least two of the daily newspapers, printed in the city of Rochester, for four days, which notice shall specify such improvement, the estimated expense thereof, the amount, if any, to be paid from the public treasury, and the portion or part of the city to be assessed for the rest of the expense, and shall require all persons interested in the subject-matter of such improvement to attend the said council at the time appointed in such notice. At the time appointed in such notice, or the time to which the hearing of the meeting for which the notice is given is adjourned, the said council shall proceed to hear the allegations of the persons interested in the subject-matter of such improvement, and after hearing the same shall make such further order in respect to such improvement as they shall deem proper. Whenever the ordinance or resolution of such improvement is amended by increasing the territory or portion or part of the city to be assessed for the expense or some part thereof, as aforesaid, or increasing the estimate of the expense thereof, after publication as aforesaid, the final action thereon shall not be had until

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a new notice, specifying the action proposed to be taken and conforming to the requisites above provided for notices, shall be published for the same period of four days by or under the direction of said council or clerk. And whenever the said improvement is changed so that expense thereof shall or may exceed the original estimate therefor, the difference when ascertained, may be assessed by or under the direction of said council upon the same territory mentioned in the original resolution or ordinance for such improvement, or such other territory as said council may deem to be benefited by such improvement, notice of such intention, specifying the action proposed to be taken, the amount of such deficiency and the territory proposed to be assessed shall be given by a notice published under the authority and in the manner and form and for the time aforesaid. The executive board is hereby directed to cause a notice to be published in one or more of the daily newspapers of said city, at least ten days before the letting of any contract for sealed proposals therefor, each to be accompanied by a bond signed by at least two responsible sureties, conditioned that the person, firm or corporation making such bid, if it is accepted, will perform the work or furnish the materials, or both, mentioned in such proposals, and fulfill any contract that may be made with him, them or it, and the amount specified in the bond shall be recoverable thereon in case the proposer fails to perform the conditions of the bond and its accompanying proposal; such bids shall be opened on the day named in such notice. Said board may let any contract as it deems for the best interests of taxpayers, but it shall publish all bids received by it, and the persons, firms or corporations to whom contracts are awarded. Such contracts shall be enforceable by and in the name of the city of Rochester, or said executive board as such. Neither the principal

or sureties on any bid or bond shall have the right to withdraw or cancel the same until the board shall have let the contract for which such bid is made and the same shall have been duly executed. No contract shall be let for any improvement at a price greater than the estimate thereof, made as aforesaid. It shall and hereby is declared to be unlawful for any person, firm or corporation to enter upon the performance of any contract with said city or executive board, or to enter upon, cumber, take possession of, or to dig, excavate or interfere with any of the streets, avenues, lanes, alleys, parks, squares, or places within the city until after a contract and accompanying bond, when such contract or bonds is required, is duly and properly executed and approved by said board, or other officer or body authorized to enter into or approve the same for or on behalf of the city. Every person, firm or corporation performing any contract with the city or executive board, shall also, during the performance thereof, protect and guard the work with proper and suitable barriers and burning of lights thereat. (*As amended L.* 1890, *Ch.* 561).

See White Charter, §§ 120, 121, 122, 125, 140 and 147, this book, pp. 99, 101, 103, 106 and 107.

Statute authorizing a local assessment must provide for notice—McLaughlin vs. Miller, 124 N. Y. 510; Remsen vs. Wheeler, 125 N. Y. 573.

§ 173. **Proceedings to acquire lands for improvements; purchase**—Whenever the common council shall determine to make any of the improvements in this title specified, or to obtain any lands, or rights or easements therein, for the purposes of Mount Hope cemetery or any other corporate purposes mentioned in this act, and that the lands of any person or corporation, or any right or easement therein, will be necessary for that purpose, they shall enter upon their minutes a resolution or ordinance declaring such determination, con-

taining a description of the land, or right or easement so deemed necessary; and also that part or portion of said city, which said common council deem will be benefited by said improvement therein, they may purchase the land, or right or easement therein deemed necessary, of the owner thereof, and make him such compensation as they shall judge reasonable; and, thereupon, shall receive from such owner a conveyance thereof to the city, and, for the purposes of such purchase or negotiations therefor, they may authorize the executive board, or commissioners of Mount Hope cemetery of said city to negotiate therefor, subject to the approval of said common council. (*As amended L.* 1892, *Ch.* 190).

NOTE—As to acquisition of lands, see White Charter, § 149, this book, p. 109.

Wide discretion as to area benefited—In re extension of Church Street in city of New York, 49 Barb. 455.

§ 174. **Common council may order condemnation of lands; filing map**—In case the said common council, executive board or commissioners of Mount Hope cemetery are unable to agree with the owner for the purchase of any real estate or lands, or right or easement therein, required for the purposes aforesaid, the said common council shall have the right to acquire title to the same, in the manner, and by the special proceedings prescribed in this act, and for that purpose, a map of said street, alley, square, park, cemetery or other public improvement, or right or easement desired, shall be made and filed in the office of the city clerk, and of the county clerk of the county of Monroe, showing on such map the lots, tracts and parcels of land, and right or easement therein which are deemed necessary to be taken, and the commencement, course and termination of the road, street, alley, square, cemetery, or park proposed to be laid out, widened, extended or altered, or of

the sewer or other work or improvement proposed to be made in or through the land so to be taken. And said common council may also direct the city attorney to take proceedings provided for in this act for the acquirement of the same. (*As amended L. 1892, Ch. 195.*).

Private property not to be taken without compensation and as prescribed by law—State Constitution, Art. 1, §§ 6 and 7.

Lands outside city limits may be condemned—Little vs. City of Rochester, 17 Weekly Digest, 513.

Lands held by corporation may be taken as those of an individual—Matter of Rochester, 96 N. Y. 413.

City can institute condemnation proceedings in either supreme or county courts; a party can interpose any legal objection, an action cannot be brought to enjoin proceedings—Hooker vs. City of Rochester, 57 App. Div. 536; affirmed, 172 N. Y. 665.

§ 175. **Application for appointment of commissioners; publication and service of notice**—The common council or city attorney, shall, after the filing of the map hereinbefore provided, cause to be published for ten days, in a daily newspaper published in said city, a notice specifying and describing the lands or the right or easement therein desired, necessary for the improvement or purpose hereinbefore mentioned, and the portion of the city deemed to be benefited by reason thereof, and that an application will be made to the county court of the county of Monroe or to a special term of the supreme court, to be held in the seventh judicial district, at a time to be specified in said notice, for the appointment of commissioners to ascertain and appraise the compensation which the owners, tenants or occupants of such lands and buildings, or rights and easements therein desired, or persons interested therein to be taken, will be entitled to for the same. The common council, or city attorney, shall also, at least ten days before the time named for such application,

cause a notice to be served on each of the owners of the premises, or rights or easements therein, to be taken, who are residents of said county, provided that the fact of such residence be known to or can, by reasonable diligence, be ascertained by said city attorney, or upon the occupants of said premises, either personally, or by leaving the same at their several places of abode, or in case no person can be found at the time of making the service residing at said place of abode with whom to leave such notice, then such notice may be served by posting the same in a conspicuous place at such place of abode, or upon the premises sought to be taken, and upon the agent of any non-resident owner, provided such agent reside in the city, and his name shall have been entered in a book to be kept by the city clerk for that purpose, the service to be made on said agent may be personal, or in the manner provided for the service of notice upon owners or occupants aforesaid. (*As amended L. 1894, Ch. 190.*)

§ 176. **Appointment of commissioners; qualification; power of court to amend; conveyances subsequent to commencement of proceedings**—At the time in such notice specified, or the time to which the application may be adjourned, the said court, upon filing proof by affidavit of the publication and service of such notice, as in the last section specified, or upon sufficient reason being shown for the omission to serve such notice, and upon hearing the city, by its city attorney, or person designated by him for that purpose, and also the parties interested, if desired, shall appoint not less than three, nor more than five, commissioners of appraisal, who shall be freeholders of said city, not interested in any of the lands, rights, easements or buildings sought to be taken, nor of kin to any owner or occupant thereof. The court to which application shall have been made, as hereinbefore speci-

tion, shall also have power, at any time, to amend any defect or informality in any of the special proceedings authorized by this act, including the map and notice aforesaid, as may be necessary or proper, or to cause new parties to be served with notice, and to direct the manner of service thereof, as it deems proper, and also to appoint other commissioners in the place of any who shall die, or refuse or neglect to serve, or be incapable of serving; and such amendment may be made at any stage of the proceedings, and where the mode and manner of conducting all, or any of the proceedings to the appraisal are not expressly provided for by this act, the court before whom such proceedings may be pending, shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this act; and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court; and the power of amendment shall be exercised as liberally as directed to be exercised in and by such court in actions by section seven hundred and twenty-three of the code of civil procedure. When any proceedings of appraisal shall have been commenced, no change of ownership by voluntary conveyance, or other transfer, of the real estate, or right of easement, or of any interest therein, or of the subject-matter of the appraisal, shall, in any manner effect such proceedings, or the easement made thereon, but the same may be carried on and perfected as if no such conveyance or transfer had been made. [illegible]

§ 177. **Oath of commissioners; hearing; notice; damages awarded.** The said commissioners, so appointed, shall take and subscribe the oath prescribed by the twelfth article of the constitution. Any of them may issue subpœnas and administer oaths to witnesses; a majority of them may adjourn the proceedings before them from time to time,

in their discretion. They shall also give public notice, by a notice published daily for ten days in at least one of the daily newspapers authorized to publish corporation notices, of the time when, and the place where, they shall meet to enter upon their duties. At the time appointed, or at any other time or times to which they may adjourn, they shall proceed to view the lands and premises proposed to be taken, and hear the proofs and allegations of the parties, and, after the testimony in such cases is closed, they shall appraise the damages which the owner or owners, or persons interested, and if there be any occupants or tenants who may have a leasehold interest in the premises or rights or easements therein to be taken for such public improvements or purpose, will severally sustain by being deprived thereof, and the compensation which they shall severally receive therefor; the compensation awarded to any occupant or tenant aforesaid shall be deducted from the damages awarded to the owner or person interested in the land or right or easement therein desired to which the right of such occupant or tenant exists. (*As amended L. 1894, Ch. 194.*)

Rights of parties to award in condemnation proceedings—In re Buchanan, 110 N. Y. 133; King v. New York, 102 N. Y. 171; Matter of Brooklyn, 111 N. Y. [illegible]; Hooker vs. Buffalo, 107 N. Y. [illegible]; Utter vs. Richmond, 112 N. Y. 610; Patterson vs. Kingston, 28 Hun 172.

As to damages—In re taking the bed of the [illegible] 70 N. Y. 228; In re extension of Church Street in the City of New York, 90 Hun 343; In re widening of Smith St. Fort St. in the city of Brooklyn, 90 Hun 373; Kingsland vs. New York, 110 N. Y. 569; Gray & Bunting L. E. Co. vs. Lee, 14 Barb. 660.

§ 178. **Report of commissioners; filing; fees; clerk**—Said commissioners shall, as soon as convenient, make their report, under their hands, or a majority of them, to the common council of said city, in which report they shall describe, with all practicable certainty,

the several pieces or parcels of land, and the premises, or rights and easements therein to be taken for such improvement, and the names and residences of the owner or owners thereof respectively, and the right of such owners, as far as can be ascertained, and the amount of the damages or compensation which should be paid to each of said owners and occupants; they shall also file duplicate copies of their report, one in the office of the city clerk and one in the office of the clerk of Monroe county. They shall be entitled to the sum of three dollars each as their compensation for each day on which they are actually and necessarily employed, and shall be entitled to the service of a clerk in taking the minutes of the testimony given before them, and keeping minutes of their proceedings, for which said clerk shall receive three dollars for each day spent by him in the business of said commission. It shall be lawful for either of said commissioners to act as such clerk, and, in that event, he shall receive the additional compensation granted to a clerk, as aforesaid, in addition to his per diem fee allowed as commissioner. (*As amended L.* 1847, *Ch.* 199).

§ 170. **Confirmation of report.** Upon the filing of such report the said common council shall assign a time for hearing objections to the confirmation thereof, and at the time assigned shall hear the allegations of all persons interested, and may take proof in relation thereto from time to time, and shall confirm the said report or may set the same aside and refer the matter to the same or to new commissioners to be appointed by the said court as before, who shall, thereupon, proceed as hereinbefore provided. But the common council may set aside said report and abandon said improvement at any time before the final confirmation of the assessment [illegible] (*L.* 1880, *Ch.* 14)

See note on Schedule case next page.

Report of commissioners cannot be set aside arbitrarily—Schneider vs. City of Rochester, 166 N. Y. 165 (1901).

NOTE—In Schneider case, Yeoman, J., sustained setting aside award and held § 170 unconstitutional (8 Misc. 652; reversed, 90 Hun 171 (1895); appeal dismissed by Court of Appeals, 155 N. Y. 619). Upon trial, judgment for defendant. (Affirmed on appeal, 33 App. Div. 588; reversed, 166 N. Y. 165, 1901). Litigation, in re Northern Trust Co. etc. vs. City of Rochester, later forced the city to abandon the improvement. Case not reported (1900).

§ 180. **Possession of lands condemned; filing of report**—If such report is not appealed from in thirty days as hereafter provided or whenever such report is finally confirmed, the common council, the executive board, the city or the commissioners of Mount Hope cemetery may take the lands and premises, rights or easements specified in the report of such commissioners and which have been determined by the common council to be necessary for such improvement on paying the amount of damages or compensation awarded to the owners or occupants thereof in such report less the amount of any assessment made against such owner or occupant for any part of the expense of such improvement when such assessment has been made or depositing the same in some bank in the city of Rochester to the credit of the person to whom the same is awarded less such assessment if any as aforesaid. If the assessment for any improvement has not been made and the common council desires to get possession of the lands, rights or easements condemned it may cause the whole award to be deposited in some bank in said city to the order of the persons entitled to the same subject however to the deduction of any taxes and assessments that may be liens on the premises taken and any assessments that may thereafter be levied for the expense of the improvement and upon such deposit being made said city shall be entitled to the immediate possession of

the premises condemned. At any time after the confirmation of such report the common council may direct that the duplicate copy thereof filed in the office of the clerk of Monroe county hereinbefore directed by section one hundred and seventy-eight of this act to be filed shall be recorded at full length in said clerk's office and said common council may also direct that any report of commissioners of appraisal in any proceedings instituted for the acquirement of lands in the city of Rochester heretofore filed in said Monroe county clerk's office or a certified copy thereof shall be recorded at length in said clerk's office with the same effect as if such proceeding had been instituted or report made and filed after the amendment of this section. Whenever any proceeding shall have been taken by said city to acquire any lands, rights or easements by condemnation and any improvement shall have been made by said city or any of its officers or departments on such lands, rights or easements and it shall appear that all the interests in said lands, rights or easements have been cut off by such condemnation proceedings by reason of the failure to give notice of the proceedings or otherwise, said defect in such condemnation proceedings shall not invalidate such improvements or any assessment levied or to be levied therefor but such assessment shall be valid and effectual notwithstanding such defect in the condemnation proceedings and said city shall upon the discovery of such defect make application to the Monroe county court to determine the amount of money to be deposited as security for the payment of the compensation which shall be finally awarded to the owner of the interests not therefore acquired. Such amount as said court may direct shall be deposited by said city as directed as security for the payment of such compensation and said city shall proceed immediately to condemn by proceedings authorized by this charter or other law the interest not acquired and no action or

proceeding shall meanwhile be brought against said city or its officers or departments by reason of such defect other than to compel proceedings to be taken to cause such deposit to be made and to condemn the interest not acquired. This amendment shall apply to condemnation proceedings, improvements and assessments hereinafter as well as heretofore taken or made by said city, its officers or departments. (*As amended L. 1897, Ch. 784*)

§ 181. **Common council may borrow money to pay damages**—Whenever it shall be necessary, the common council may borrow the whole or any portion of the damages so to be paid, and may cause to be executed, to secure the same, the note or other obligations of said city. (*L. 1888, Ch. 140*.

§ 182. **When title vests in city of Rochester under this act**—When any damages shall be awarded and any assessment for benefits of the improvements in respect to which such damages are awarded shall be made upon the same person or persons or in respect to the ownership of any parcel of land a part of which or a right of easement therein shall be taken for such improvement, in that case the said city of Rochester shall become vested with the title to such land or right or easement therein so taken free from any and all liens and incumbrances of every kind and nature, upon paying or depositing or directing the depositing, according to the provisions of this act, the excess of the amount so awarded over and above the amount so assessed, and any other taxes and assessments which may be liens on the premises taken; and in case the amount so awarded is less than the amount assessed, then upon the confirmation of the assessment roll containing the application of such award upon such assessment,

Any and all lands required by the city of Rochester for any purpose under the provisions of this act shall be deemed to be acquired for public use. (*As amended L. 1897, Ch. 784.*)

City cannot deduct from award taxes falling due after proceedings are begun—Buckout vs. City of New York, 170 N. Y. 305.

§ 183. **Appeal from report, how taken** — Any person considering himself aggrieved by any part of such report may, within thirty days after such confirmation, serve upon the mayor of said city a notice of appeal to the supreme court from the report and determination of said commissioners, and shall accompany such notice with a bond, executed to the said city by two or more sureties, to be approved by the mayor of the said city, or the county judge of Monroe county, in the penalty of one thousand dollars, conditioned for the diligent prosecution of the said appeal, and for the payment of all costs and charges which may be incurred by the said city in resisting the same and defending the said report, in case the same shall be confirmed. A copy of such notice shall also be served at the same time upon the county clerk of Monroe county. (*L. 1888, Ch. 141.*)

§ 184. **Proceedings stayed by appeal** The giving of such notice and delivering such bond shall suspend all further proceedings by the common council in relation to the taking of the lands and tenements, which shall be the subject of such notice, until a decision thereon, as hereinafter provided. (*L. 1880, Ch. 141.*)

§ 185. **County clerk to certify report to supreme court** — The county clerk of Monroe county shall forthwith, after service of such notice upon him, certify to said supreme court a copy of the report of said commissioners [illegible] laws.

sioners, with the proceedings and evidence had before them, filed with him by said commissioners. (*L.* 1880, *Ch.* 14).

§ 186. **Where and how appeal heard**—At any general or special term of the supreme court held in the seventh judicial district, the said appeal may be brought to hearing before said court upon eight days' notice given to or by the said appellant. (*L.* 1880, *Ch.* 14).

§ 187. **Preference of appeal; power of court**—The said court shall consider the said appeal, and examine all questions of law, or of fact, that may be involved therein, and shall give the same a preference over other cases, and shall confirm or annul such report, as the said court shall deem just. In case of annulling said report, the said court may direct a rehearing before the same, or other commissioners, to be appointed by it, and in such case, the same proceedings shall be had on such rehearing, and for the examination, correction and review of any subsequent report, as is hereinbefore provided. The said court may direct that any other party besides said appellant and said city be heard before the decision of such appeal, when it shall appear that such party has any interest to be affected by the determination of said court. (*As amended L.* 1892, *Ch.* 196).

§ 188. **Appeal from order of special term**—In case such appeal shall be brought to hearing at a special term of said court, either party affected by the order of said special term may appeal therefrom to the general term of said court within ten days after notice of such order, by serving a notice of appeal in the usual manner of serving notices of appeal in said court, and if a party other than said city, by giving a bond conditioned and approved as is provided in section one hundred and seventy-five of this act.

the said appeal shall be heard by the general term in the same manner as provided in the next preceding section, and the decision of said general term shall be final and conclusive. (*L.* 1880, *Ch.* 14).

Appellate division has jurisdiction of general term - Code Civil Proc., § 220.

§ 189. **Costs on appeal; liability of sureties**—In case the said report so made shall be confirmed in the supreme court, either at the special term, or by the general term on appeal, the obligors in the bond given to the said city, as before provided, shall be liable to pay to said city the same costs as are allowed upon appeal in civil actions, to be adjusted by the clerk of Monroe county; and in case the said report shall be corrected or modified, the supreme court shall determine, under the circumstances of the case, whether the applicant shall be entitled to his costs and expenses; and if the same be awarded to such applicant, they shall be the same as are allowed to said city, and be paid on adjustment by said clerk, by the common council of said city, as part of the contingent expenses thereof. (*L.* 1880, *Ch.* 14).

§ 190. **Ordering assessment for damages awarded and expenses; publication of notice for hearing**—Whenever the amount of damages for the taking of any lands and premises aforesaid, or rights or easements therein, shall be finally ascertained and fixed, in the manner herein provided, the common council may order that the assessors, if not interested in any of the property to be taken, shall proceed to apportion and assess the estimated expenses of the improvement, or the portion thereof to be assessed, as aforesaid, with the amount of such damages, and all the costs and charges of the city in the proceedings, upon the lots and parcels of land within the territory deemed by the resolution or ordinance of the common council relative thereto,

to be benefitted by such improvement, as near as may be, in proportion to the benefit which each shall be deemed to receive thereby. Before making such order, the common council shall, by a published notice of at least four days, give the parties interested an opportunity to be heard. (*As amended L.* 1890, *Ch.* 561).

Error in judgment in assessments—Hoffeld vs. Buffalo, 13 N. Y. 587.

Assessment illegal when erroneous rule adopted—Comm. of Monroe vs. City of Rochester, 163 N. Y. 37.

§ 191. **Assessment roll; oath of assessors**—Upon such order, the said assessors shall, as speedily as may be, make and report to the common council an assessment roll made in the usual form, in which roll they shall specify and set down in separate columns the names of all persons assessed, the description of the lots and parcels of land assessed, the amount to which each person shall be assessed, the amount of damages, if any, to which such persons are respectively entitled by the award of the commissioners, and the amount of the excess, if any, to be collected, which roll shall be delivered to the city clerk. The assessors shall severally take and subscribe an oath similar to the one prescribed in section two hundred of this act, and the assessment roll shall also have attached thereto an oath and certificate similar to the one provided for in section two hundred and five of this act. (*As amended L.* 1890, *Ch.* 561).

Assessment illegal if lands are omitted—Hogan vs. Rochester, 93 N. Y. 610.

§ 192. **Time for allegations thereon before common council**—Upon such assessment roll being made and filed, the common council shall assign a time when they will proceed to hear any complaints or appeals from the said assessment. (*L.* 1880, *Ch.* 14).

Appealing from award—People vs. City of Syracuse, 77 N. Y. 39.

§ 193. **Hearing allegations; amending, correcting, setting aside and confirming assessment roll.** At the time appointed for that purpose, and at other times to which the hearing may be adjourned, the common council shall hear the allegations and proofs of all persons who may complain of such assessment, and may amend and correct the said assessment roll in whole or in part, or may set the same aside and direct a new assessment either by the same assessors or by such other persons as they may designate, and in such case the same proceedings shall be had as are herein provided on the first assessment; or the common council may ratify and confirm such assessment without any corrections, or with such as they may deem proper. (Z. 1884, Ch. 141.

§ 194. **Assessment, how collected.** When the said assessment shall have been confirmed, the mayor shall annex his warrant thereto, and the same shall thereupon be delivered to, and be collected by the city treasurer, with fees of collecting added, as is prescribed in this title. (Z. 1860, Ch. 141.

§ 195. **Damages paid, when and how.** Whenever the amount of any damages for taking any lands as aforesaid shall be finally ascertained and fixed, and the assessment roll shall have been finally confirmed, the common council shall, within four months thereafter, pay the amount of such damages to the owners and occupants of lands and tenements as to persons having any liens thereon, to whom the same shall have been allowed, or deposit the same as hereinbefore provided; and in case such owners be unknown, non-residents of the said city, married women, infants, idiots or lunatics, or the right and interests of persons claiming the same, shall, in the opinion of the said common council, be doubtful, it shall be lawful for the common council in any such case to direct the amount of such damages to remain

with the treasurer of said city, and it shall be the duty of such treasurer to credit the same to the parcel of land so taken, for the benefit of whomsoever may be entitled to the same. (*L.* 1880, *Ch.* 14).

Decisions on damages—Hammersley vs. May [illegible]

§ 196. **When city entitled to possession of lands; obligation of city to pay damages**—Until such damages shall be paid or said deposit made, or direction given, it shall not be lawful for the common council, or any of their officers or agents, to take or enter upon any lands or tenements for the taking of which any such damages shall have been allowed. But the said city shall not become obligated to take any such lands or tenements, nor to pay or deposit such damages therefor, nor shall the owners, occupants, or other persons having any liens thereupon, acquire any right to such damages, nor to be paid therefor, until the final confirmation of said assessment roll, as hereinbefore provided. (*L.* 1880, *Ch.* 14).

Possession of lands — Detmold vs. Drake, [illegible]

§ 197. **Appointment of guardian for infant in condemnation proceedings; supplemental report**—When it shall be known to, or discovered by the common council, or city attorney, at any stage of the proceedings, before the said report is confirmed by said common council, that the owner of any real estate or building appropriated, or right of easement therein making any of the improvements herein provided for, is an infant, a guardian for him shall be appointed by the court in which such proceedings are had, to act for such infant in the premises, which guardian shall be a responsible person, approved by any judge of said court. It shall be the duty of the court to appoint such guardian on the application of

the mayor or attorney of the city, or of the infant, or of some person acting in his or her behalf, and which guardian when so appointed shall see that the rights of such infant or infants are protected, and if the report of the commissioners has then been made, they shall reconvene and proceed to hear the allegations and proofs of the parties concerning the property or interest of said infant affected by said proceeding, and make a supplemental report in the foregoing manner concerning the same. (*As amended L. 1892, Ch. 190.*)

§ 198. **How expense of improvement paid; expense reported to assessors; assessments how paid; common council may authorize bonds to be issued.** Whenever the common council shall determine that the whole or any part of the expense of any improvement shall be defrayed by a local assessment and the expense of such improvement shall exceed in the aggregate the sum of one thousand dollars, it may be paid one-third in cash and the balance in the city's notes payable in one and two years with interest thereon not exceeding six per centum per annum, and in case such expense shall exceed ten thousand dollars it may be paid one-third in cash and the balance in the city's notes payable in one, two, three and four years respectively with interest thereon not exceeding six per centum per annum, and the city may get its notes discounted for the above purpose. The entire expense, to be assessed upon the property benefited, of every local improvement shall be ascertained by the comptroller, including any damages or awards for the taking of lands, rights or easements and all expenses incident to the making of the improvement and assessment, together with any interest paid or accrued at the time of completion on the orders, certificates of indebtedness or notes issued by the city to pay the expenses of such improvement, and interest on such amount shall

Assessments for local improvements—Continued

be reckoned to the time the assessment or first installment shall become due. The aggregate amount thereof shall thereupon be reported to the assessors by the comptroller. Whenever the common council shall determine that the whole or any part of the expense of any improvement shall be defrayed by a local assessment, it shall, in the final ordinance providing for such improvement, determine that the assessment therefor shall be and become due and payable in one sum or in any number not more than ten equal annual installments. Thereupon, the said assessment if payable in one sum or the first installment if payable in installments shall be and become due on the first day of the month following the month in which the said assessment roll shall have been received by the city treasurer, if the assessment roll is received by said treasurer on or before the fifteenth day of the month, and if received after said fifteenth day of the month then such assessment or installment shall be and become due and payable on the fifteenth day of the month following the month in which the said assessment roll shall have been received by the city treasurer; and if payable in installments, succeeding payments shall be due in each succeeding year on the *date and month the first installment became due. In case any such day is Sunday or a public holiday, other than a half holiday, the assessment or installment shall become due and payable on the next day thereafter. The treasurer shall collect and receive in addition to the amount due on any assessment or installment, interest thereon at the rate of five per centum per annum from the date the assessment became due if payable in one sum, or from the date the first installment became due, if payable in installments. At any time after the first installment becomes due and payable the person or persons liable to pay such assessment may pay

*So in session laws.

the entire assessment or any installment thereof, and accrued interest. The common council may from time to time cause to be issued bonds of the city to be known as local improvement bonds, the aggregate amount thereof not to exceed one million five hundred thousand dollars to be sold after competition upon sealed proposals at not less than par for such period as it may determine not exceeding twenty years, and bearing interest at a rate not exceeding four per centum per annum, to provide the means necessary to pay all expenses incurred or to be incurred on account of local improvements, the expense whereof is to be collected in whole or in part by assessment from the property benefited; and to pay and take up all acceptances, certificates of indebtedness, notes and orders heretofore or hereafter issued on account of such local improvements and interest thereon. The common council may also cause to be issued the city's certificates of indebtedness for the same purposes. The proceeds of the sale of such bonds or certificates of indebtedness shall be paid into a fund which is hereby created and which shall be known as the local improvement fund. There shall be paid from this fund all notes, acceptances and orders heretofore issued upon account of said local improvements, and not paid, and all notes, acceptances, certificates of indebtedness and orders hereafter issued upon account of said local improvements, and interest thereon, and all costs and expenses of said local improvements heretofore made or performed, and not paid for, and all costs and expenses of such local improvements hereafter made and performed. There shall be turned over to the credit of said local improvement fund all moneys now in the hands of the treasurer collected from local assessments; and all amounts hereafter collected by the treasurer from assessments for said local improvements shall be paid into and credited to said fund. When any local improvement bonds, notes or certificates

of indebtedness, or interest thereon shall become due, they shall be paid from the local improvement fund, and if there shall not be sufficient money in said fund to pay and redeem the same, the balance thereof shall be paid from the city treasury, or they may be renewed or reissued, in the discretion of the common council. Any surplus interest accruing in the local improvement fund may be applied to the payment of such other city debts as the common council may direct. Every general tax or local assessment authorized by this act which has been assessed upon any property, real or personal, or upon the owners or occupants thereof, shall be and is hereby declared valid and effectual notwithstanding any irregularity, omission or error in any of the proceedings relating to the same, or in the making, levying and assessment of the same. Nothing herein contained shall be deemed to validate any assessment appearing upon any assessment roll heretofore made for a local improvement, where such roll contains an assessment which has heretofore been declared invalid by the judgment of a court of competent jurisdistion. (*As last amended L.* 1901, *Ch.* 719; *also amended L.* 1882, *Ch.* 120; *L.* 1887, *Ch.* 35; *L.* 1890, *Ch.* 561; *L.* 1899, *Ch.* 393; *L.* 1901, *Ch.* 209).

§ 199. **Assessors shall make assessments upon receipt of certificate of comptroller** — Upon the receipt of the certificate of the comptroller as to the amount of the expense of a local improvement, the assessors, if they are not interested in any of the property directed in the ordinance or any other subsequent resolution to be assessed as benefited, and if any two of them are not so interested, then such two shall make an assessment upon all the lots and parcels of land within the portion or part of the city directed to be assessed, of the amount of expense in proportion as nearly as may be to

the advantage which each shall be deemed to receive by the making of such improvement. The expense of sprinkling streets, cleaning streets, care, embellishment and maintenance of streets, and cleaning of sidewalks done pursuant to an ordinance of the common council shall be certified by the comptroller to the city assessors, who shall in the preparation of the next assessment rolls for general city taxes insert against each lot or parcel of land the amount of expense in proportion as nearly as may be to the advantage which each shall be deemed to receive by the making of such improvement, and allegations thereon shall be heard, and such assessment shall be collected at the same time and in the same manner as other city taxes. And the assessors shall have the power to amend and correct such assessments as they shall deem proper, at the same time and in the same manner as other city taxes, and all the provisions of the charter of said city applicable to the collection of city taxes are hereby made applicable to such assessments. (*As amended L. 1901, Ch. 719.*)

§ 200. **Oath of assessors**—It shall be the duty of the assessors to meet together at such time and place as shall be agreed upon by them, and thereupon severally to take and subscribe an oath before some officer authorized to take affidavits to be read in courts of record, that they are not interested in the premises described in the ordinance or any other resolution, to be assessed, and that they will faithfully and impartially discharge the duty imposed upon them by law, which said oath shall be forthwith returned and filed by the clerk of the city. In case any assessor shall not be able to take such oath, the city clerk shall forthwith report the fact to the common council. (*As amended L. 1899, Ch. 504.*)

§ 201. **Appointment of special commissioners; powers and duties**—If there shall not be at least two assessors found indif-

ferent as aforesaid, the common council shall appoint one or more special commissioners not interested as aforesaid, to act with the assessor or assessors so found indifferent, or in case no assessor shall be found indifferent, then to act separately, who shall be sworn as aforesaid. The common council also, in any and every case, instead of designating assessors to make any local assessment, or to assess any damages, or to do any act, may appoint three special commissioners for such purpose, who shall be sworn and shall have the same powers and be subject to the same duties, and who shall proceed in the same manner as is provided in reference to assessors; and all provisions of law in reference to assessors of said city, and to their powers, duties and proceedings shall apply to such special commissioners in each and every case, of their appointment, except that the general assessment rolls of said city shall be made by assessors only. (*As amended L.* 1890, *Ch.* 561).

NOTE—As to assessors being interested in improvement, see White Charter, § 306, this book, p. 187.

§ 202. **Assessment roll for local improvements**—The assessors or persons thus sworn shall proceed to make an assessment according to the said order, and shall make out an assessment roll, in which shall be entered the names of the persons assessed, so far as they can ascertain the same, the value of the property for which they are assessed, and the amount assessed to them respectively, with a brief description of the lots or parcels of land assessed. A designation of the lots or parcels of land so assessed, by any description sufficient to distinguish the same, shall be sufficient in making said assessment roll, without regard to the names of the owners or occupants. (*L.* 1888, *Ch.* 14).

Assessment roll must include state property when legislature authorizes local assessment—Hassan vs. City of Rochester, 67 N. Y. 528.

Effect of omitting owner's name—Haight vs. Mayor of New York, 60 N. Y. 280.

Effect of omitting any property—Savage vs. Buffalo, 45 A. L. J. 364.

§ 203. **Compensation for special commissioners**—When assessments are made by persons other than assessors, they shall, receive such compensation for their services as shall be allowed by the common council, to be paid out of the contingent funds of the said city, not exceeding two dollars per day for each. (*L.* 1880, *Ch.* 14).

§ 204. **Notice to hear allegations before assessors**—Immediately after such assessment shall have been completed, the said assessors shall determine the time and place where they will first meet to hear the allegations and objections of all persons interested in said assessment of which, previous notice shall be given by publication in a daily newspaper published in said city; the first publication to be made at least ten days before the time fixed for said meeting. (*As amended L.* 1890, *Ch.* 561).

§ 205. **Hearing of allegations; oath and certificate of assessors for roll; report to common council; hearing before common council or committee; confirmation; re-assessment before or after confirmation.**—At the time and place designated in such notice the assessors, or a majority of them, shall meet and hear such allegations and objections, and the assessment books shall then be opened for the examination and inspection of all parties interested. The assessors may adjourn from time to time, as may be deemed necessary, and they shall amend and correct such assessments as they may deem proper. When completed, an oath, substantially in the following form, shall be written or printed, upon or attached to, said roll and be signed by the assessors or a majority of them, and sworn to before an officer authorized to

administer oaths, namely: "Assessors of said city, being severally sworn, depose and say, and each for himself says, that the foregoing assessment roll was made by them in pursuance of an order or resolution of the common council of said city, that due legal notice of their meeting was given, and the same was by them adopted, after such notice and allegations thereunder, and is, according to the best of their knowledge and belief, a just and true assessment as against the persons or property to be benefited, and according to the benefit derived", and they shall also sign a certificate substantially in the following form, which shall also be written or printed upon, or attached to, said roll: "We do hereby certify that the foregoing assessment roll is a true record of our determination of the same, after having heard allegations thereon, and fix the amount assessed to the respective persons of property therein named, and the same is just and true," and thereupon said roll shall be delivered to the clerk of said city, who shall report the same to the common council at its next meeting. Upon such return being made, filed and so reported, the common council shall proceed to hear allegations against, and appeals from, the said assessment, and may correct, confirm, set aside or refer to its committee on assessments, or other committee, or order a new assessment to be made. If the same shall be referred to a committee, the said committee may proceed to hear allegations or objections, upon five days notice by publication, or may without such notice or hearing, examine and report to the common council, who shall thereupon proceed to correct, confirm or set aside said report, or order a new assessment. Any assessment made at any time heretofore as well as hereafter may after its confirmation be reconsidered by said common council at any time, and the same proceedings may be had thereon, as herein provided before the confirmation thereof. In case of any change in the

assessment made after such reconsideration and the confirmation thereof, the amount paid on the original assessments shall be credited on the new or reconsidered assessment, and in case such payment exceed the said new or reconsidered assessment, the amount thereof shall be repaid upon demand, and upon proper proof, to the person entitled to the same, and in case the amount so paid shall not equal the amount of the new assessment, the person and property against whom the same is assessed shall be liable for the balance, with the same effect as if said balance was the amount of the original assessment. (*As amended L.* 1890, *Ch.* 561).

§ 206. **Description of property and person in assessment; liability of owner.** —Every assessment so ratified by the common council shall be final and conclusive. It shall be sufficient, in every assessment, to designate the owners or occupants of the lots and parcels of land intended to be assessed, either by name or as unknown, or to describe said several lots and parcels of land by any description by which they may be respectively distinguished. Every assessment so made shall create a personal obligation or liability against the owner of the lot or parcel of land assessed to pay the city of Rochester the amount of such assessment, for the collection of which, together with interest, cost, and expenses, said city may maintain, in its own name, an action in any court of competent jurisdiction, in addition to any other remedies now provided by law for the collection thereof. (*L.* 1880, *Ch.* 14).

Assessments may be enforced against personal estate Matter of Elsner, 86 App. Div. 207.

§ 207. **Assessment roll delivered to treasurer; publication of notice for payment**—Whenever any assessment is confirmed by the common council, the assessment roll shall be delivered to the city treasurer, whose duty it shall be to give five days public notice,

by advertisement in two daily newspapers printed in said city, of the receipt of such roll, requiring the persons assessed, or the owners or occupants or the lots assessed, to pay the assessment to him at his office within thirty days from the first publication of said notice, except in cases where it has been provided that assessments may be paid in installments, and in such cases, within the time so provided. (*L.* 1880, *Ch.* 14).

§ 208. **Treasurer may issue warrant for assessment**—If such assessment, or any installment thereof, shall not be paid when the same becomes due, the city treasurer may issue a warrant therefor with interest thereon from time to time when due, besides collector's fees. (*As amended L.* 1890, *Ch.* 561).

§ 209. **Proceedings on warrant; unpaid assessments inserted in general city tax**—The city treasurer shall issue his warrant as aforesaid to a collector commanding him to collect the amount unpaid on such assessment, with interest and fees as aforesaid, and shall annex to such warrant either a list of such assessments taken from the assessment roll, or the roll itself, which warrant shall be in the same form, and the same proceedings shall be had, as prescribed in the case of the collection of the general city taxes remaining unpaid, and all the provisions of the charter in relation to the collection of such general city taxes, the warrant therefor, the appointment, duties, fees and security of such collectors, the responsibility of the city treasurer and his sureties for such collectors, the jurisdiction of the supreme court in case of delinquencies, shall be applicable to every such assessment. In case any assessment or any installment shall have become entirely due and the whole or any part thereof remains unpaid and a warrant shall have been issued therefor and returned unsatisfied, it shall be the duty of the city treas-

urer to report the same to the assessors. Whenever any assessment or any installment thereof is so reported the assessors in preparing the next roll for general city taxes shall insert therein against the property on which it was assessed the amount of such unpaid assessment, with interest thereon, at the rate of ten per centum per annum from the time when due down to the first day of May thereafter. Such amount shall be in a separate column from the general city tax to be levied for the ensuing year. Upon the confirmation of such assessment roll, such amount shall be added to the general city tax and the entire amount shall be collected as hereinbefore provided in reference to general city taxes, and if such amount is not paid, the lands shall be sold therefor as hereinbefore provided. When such tax is collected, the treasurer shall credit the portion thereof which was due on any assessment to the proper fund. On assessments heretofore unpaid the property assessed may be sold for such assessments as heretofore provided by said charter. (*As amended L.* 1897, *Ch.* 784).

Treasurer must accept tender of tax—Hutchinson vs. City of Rochester, 76 Hun 315.

§ 210. **Owner, not tenant, to pay assessment**—In all cases where there is no agreement to the contrary, the owner or landlord, and not the occupant or tenant, shall be deemed in law the person who ought to bear and pay every such assessment made for the expense of any public improvement in said city. (*L.* 1888, *Ch.* 141).

§ 211. **When suit brought for assessment paid; proportioning assessments or taxes**—When any such assessment shall be made upon or paid by any person, when by agreement or by law the same ought to be borne or paid by another person, it shall be lawful for the one so paying to sue for and

recover of the person bound to pay the same, the amount so paid with interest. In case any tax or assessment shall have been levied upon any piece of land, and two or more persons are or shall have become the owners of portions thereof, the common council shall have the right to receive from the owner of any portion of such land his portion of the entire tax or assessment as the assessors shall certify to be just; and upon paying such amount, the property owned by him shall be free from the lien of such tax or assessment, and the balance thereof shall be and remain a lien upon the residue of such property assessed. This provision shall apply to certificates of tax sales held by the city and not foreclosed. (*L.* 1880, *Ch.* 14).

Assessment for street improvement may be deducted from award—Little vs. City of Rochester, 87 Hun 493; affirmed, 150 N. Y. 667.

§ 212. **Agreement as to assessments between persons, not affected**—Nothing herein contained shall impair, or in any way affect, any agreement between any landlord and tenant, or other person, respecting the payment of any such assessment. (*L.* 1880, *Ch.* 14).

§ 213. **Excess of assessment to be apportioned**—If upon the completion of any such improvement, for which such assessment shall have been made, it shall appear that a greater amount has been assessed and collected than is necessary to defray the expenses thereof, the common council shall apportion such excess among the persons and property assessed in proportion to the amount collected of them, and shall pay the same to such persons, and the owners of such property, entitled thereto on demand. (*L.* 1880, *Ch.* 14).

§ 214. **Deficiencies, how assessed; application of section; irregularities, etc., not to affect validity; treasurer's warrant** If it shall appear that a greater sum of money has been expended in the completion of such improvements than was estimated as aforesaid, the common council may direct the deficiency to be assessed on the lots and parcels of land benefited by such improvements in the same manner as hereinbefore directed, and the same proceeding shall in all respects be had thereon. The said common council may enlarge the territory to be assessed for such deficiency, in which case the same proceedings shall be taken as hereinbefore directed, for making assessments, as near as may be. And, if it shall appear that any greater sum of money than was originally assessed has been expended for the benefit of the same property originally assessed, although not embraced in the improvement as ordered by the said commissioners, the said commissioners may, in like manner, direct the assessment of the same upon the lots and parcels of land benefited thereby. This section shall be applicable, not only to future assessments and re-assessments, but also, to assessments and re-assessments heretofore ordered by the said common council. And all assessments and re-assessments heretofore made, or that hereafter may be made for improvements in said city, shall be, and are hereby declared to be, valid and effectual, notwithstanding any irregularity, omission or error in the proceedings relating to the same, and all questions concerning the same shall be determined in all courts and places liberally to sustain such proceedings, and with reference to the very right of the case, and not strictly. Treasurer's warrants may be issued for the collection of any or all of such assessments and re-assessments remaining unpaid, with the same force and effect, and all proceedings may be taken in like manner, and with like effect, as if no other warrant had before been issued. (*L.*1880, *Ch.*14).

NOTE—As to vacating and reducing assessments, see White Charter, §§ 465-471, inclusive, this book, *post.*

Distinction between mistakes made in taxation for governmental purposes and assessments for local improvements — Van Deventer vs. Long Island City, 130 N. Y. 133.

§ 215. **Irregularities; lien of taxes and assessments; re-assessment; record of sales**—Every tax or assessment authorized by this act which has been assessed upon any lands, tenements, or real estate, or upon the owners or occupants thereof, shall be, and is hereby declared valid and effectual notwithstanding any irregularity, omission or error in any of the proceedings relating to the same, and shall be and remain a lien upon such lands, tenements or real estate in respect to which the same have been made, from the time of the passage of the resolution of the common council levying the same in the case of the annual city taxes, and from the time of the confirmation by said common council of the roll containing the same, in the case of other taxes and assessments, and until the same shall be actually paid and satisfied. In case any assessment shall remain unpaid on account of any irregularity, omission or error in any assessment for a local improvement or of an annual city tax, or in the proceedings relating thereto, or in case of error in the description of lands, tenements or real estate, or in the designation of the owners or occupants, the common council may, in their discretion, proceed to correct such irregularity, omission or error, and cause the amount so unpaid to be re-assessed on the property deemed to be benefited by such improvement, or assessed in such general city taxes, or upon the owners or occupants thereof, and the common council are hereby authorized and empowered to have such re-assessment made in the same manner as the original assessment should have been made, and to direct the treasurer to

correct any such irregularity, omission or error, and such re-assessment or correction shall have the same effect as if the assessment had originally been properly made. Whenever it shall appear by the judgment of a court of competent jurisdiction that any assessment for a local improvement is illegal or void for want of jurisdiction in making the improvement or assessment, or for any other reason, and any portion thereof remain unpaid, the common council may pass a resolution or ordinance designating the improvement so made, the whole expense thereof including any and all interest thereon to the date of the re-assessment, including any and all that might be imposed as provided by this act in the case of local assessments, and the part or portion of the city deemed to be benefited thereby, and may assess the lots and parcels of land in such territory described for such expense, according to the benefit received, and proceed in all respects as in cases of assessment, and such action shall have the same valid and binding force as if the same had originally been properly done. Whenever any moneys shall have been paid for an assessment, and a re-assessment shall be made in pursuance of this section, the amount shall be credited on such re-assessment to the property on which the assessment was made, and in case of any alteration in the assessment by such re-assessment, whereby the amount so paid shall exceed the amount re-assessed on the same property, such surplus shall be paid to the person who may have paid the same, and in case it shall be insufficient to pay the amount re-assessed, the deficiency shall be collected in the same manner as other assessments. It shall be the duty of the city treasurer, within thirty days after any sale of lands for taxes, to furnish to the county clerk of Monroe county, a list of such lands sold, specifying when, to whom, for what time, and the amount, for record, which list the county clerk shall record immediately after receiving

the same, in a book provided by the city treasurer for that purpose, and the amount of such sale on each lot or parcel of land, shall be a lien thereon, and take precedence of any incumbrances whatever. (*As amended L.* 1897, *Ch.* 784).

Money collected under assessment valid on face cannot be recovered until assessment is set aside—Trimmer vs. City of Rochester, 130 N. Y. 401.

§ 216. **Power of common council to construct and repair sidewalks, pavements, etc.**—Whenever the common council shall deem it expedient to construct any sidewalk or pavement within the said city, they may, by ordinance or otherwise, require the owner or occupant of any lot or house adjoining such street to lay such sidewalk, or construct such pavement to the center of the said street, in front of his or her lot or house; or they may direct such sidewalks and pavements to be made according to the provisions of this title. The common council may, in like manner, by ordinance or otherwise, under such penalty or penalties as they may prescribe, require the owners and occupants, or either, of land in said city, or in any specified part thereof, to repair, maintain and reconstruct sidewalks, pavements and street improvements adjoining their respective premises to the center of the street or alley, in such manner as the common council, by ordinance or otherwise, may direct; the expense to which any occupant or tenant may be thus subjected may be collected by him from the owner of the premises, unless otherwise agreed, or unless such tenant or occupant be bound to bear such expense by the terms or nature of the agreement under which he holds the premises. (*L.* 1880, *Ch.* 14).

§ 217. **Power to collect expenses for widening streets, etc.**—Whenever the owner or occupant of any lot or house shall refuse or neglect, within such time as the common

council shall have appointed, to conform to any regulations made by the common council for widening streets, or for any other purpose, it shall be lawful for the common council to cause such regulations to be enforced at the expense of the city, and to recover the amount of such expenses, with damages, at the rate of ten per cent. with costs of suit, of the owner or occupant of such lot or house, whose duty it was to conform to such regulation. Upon any judgment recovered in said action, an execution may be issued against the person of the defendant therein, after one against his property shall have been returned unsatisfied. (*L.* 1880, *Ch.* 14).

§ 286. **Assessors to be furnished with descriptions of real estate; maps, etc., to be filed with the assessors; deeds to be presented to assessors before recorded**—The common council may, from time to time, direct the city surveyor to prepare and furnish to the board of assessors for their use, a brief description of any real estate in the city, or to prepare a roll or rolls of any real estate in the city for said board of assessors, exclusive of valuation. The common council may also take such measures as they shall deem expedient, to make the office of the board of assessors the repository of such maps, records, documents, surveys and other matters as may facilitate the full and accurate description of the real estate in the city, and direct the manner of keeping them; and shall provide that the same shall so be kept as to show the names of the owners and claimants of each piece or parcel of land, as far as the same can be ascertained. For the purpose of enabling the said board to prepare and perpetuate a more perfect record of the names of such owners and claimants, every deed of conveyance of lands in said city, or other instrument in writing, whereby the ownership of said lands shall be changed, made and executed

after the first day of May, one thousand eight hundred and sixty-five, shall, before the same shall be received for record by the county clerk, be presented at the office of said board of assessors, who shall, without fee, note the said transfer of title upon the map in their office, and also note the fact of such presentation upon said deed. But nothing herein contained shall be construed to affect or impair the validity of any record in the county clerk's office. (*L.* 1880, *Ch.* 14).

§ 289. **Maps of subdivisions of lands in city must be filed and assessors given notice; misdemeanor**—Before the owner of any tract or parcel of land situate in the city of Rochester shall sell or convey to others any portion thereof in subdivisions of such tract or parcel, he shall cause a map of such tract to be made, showing the subdivisions thereof, with the numbers of their lots and their dimensions, and all proposed streets, lanes and alleys, which map shall be filed in the office of the Monroe county clerk, and a copy or duplicate thereof delivered to the assessors of said city, and whenever such owner shall convey any portion of said tract in such manner as to effect a subdivision of any lots as designated in such allotment, he shall give notice thereof immediately to the assessors of the city, specifying the part so divided and the manner of division, and for every violation hereof such owner shall be deemed guilty of a misdemeanor and punishable as such, and every map made of a tract or subdivision aforesaid at any time heretofore where any portion thereof in subdivisions of such tract or parcel has been sold or conveyed heretofore, shall be by the party owning said tract, and conveying the same within one month after the time when this section, as amended, takes effect, filed with said county clerk, and such owner shall deliver a copy, or duplicate thereof to said assessors, and for a failure so to do, such

owner shall be deemed guilty of a misdemeanor, and punishable as such. (*As amended L.* 1890, *Ch.* 561).

Assessors shall make annual list of real property exempt from taxation, publish the same and transmit to the state comptroller. (L. 1896, Ch. 689).

Lien of city taxes superior to lien acquired by private purchaser at county tax sale—City of Rochester vs. Kapell, 86 App. Div. 224; affirmed by Court of Appeals, Dec. 19, 1903. This case is not yet reported, and has been affirmed since p. 189, this book, was printed, where said case is noted.

ARTICLE IX

DEPARTMENT OF CHARITIES AND CORRECTION

§ 339. **Commissioner of charities and correction; deputy**—There shall be a commissioner of charities and correction appointed by the mayor, within ten days after the beginning of every mayoralty term. He shall hold office for two years, unless sooner removed by the mayor. He may appoint, to hold office during his pleasure, a deputy and such other subordinates as may be prescribed by the board of estimate and apportionment. (*L.* 1898, *Ch.* 182).

See note as to oath of office under § 61, White Charter, this book, p. 70.

§ 340. **Bonds of commissioner and deputy; vacancy**—The commissioner of charities and correction and the deputy commissioner of charities and correction shall each give a bond to the city, with sureties, for the faithful discharge of the duties of their respective offices, in a penalty to be prescribed by the common council, which bond, as to its form and the sureties thereto, shall be approved by the mayor. In case of a vacancy in the office of commissioner, the mayor shall fill such vacancy within ten days by appointment for the remainder of the term. (*L.* 1898, *Ch.* 182).

See note as to official bonds under § 62, White Charter, this book, p. 72.

§ 341. **Powers and duties of commissioner**—The commissioner has the general care, management, administration and supervision of the charities, alms-houses, hospitals, houses of correction and all other similar institutions, the control or government of which belongs or is intrusted to the city; he shall make regulations for the

expenditure of the money of the city for the support or relief of the poor, and have the general supervision of such expenditures, and he shall furnish to the mayor a daily report of the aid and relief granted by him, with the names and addresses of all recipients, and he shall have such other powers and duties not inconsistent with the provisions of this act or the other laws of the state, as may be prescribed by the ordinances of the common council. (*L.* 1898, *Ch.* 182).

§ 342. **Overseer of the poor** – The commissioner shall appoint, to hold office during his pleasure, an overseer of the poor and as many assistants as may be prescribed by the board of estimate and apportionment. (*L.* 1898, *Ch.* 182).

§ 343. **Bond of overseer** – The overseer of the poor shall give a bond to the city in such penalty, in such form and with such sureties as the commissioner may prescribe and approve, for the faithful discharge of his duties. (*L.* 1898, *Ch.* 182).

See note as to official bonds under § 62, White Charter, this book.

§ 344. **Powers and duties of overseer of poor** – The overseer of the poor, subject to the regulations and supervision of the commissioner, shall possess all the powers and authority of overseers of the poor in the several towns of the county in which the city is situated, and be subject to the same duties, obligations and liabilities; and he and his assistants shall have the power to examine, under oath, any person applying for relief. (*L.* 1898, *Ch.* 182).

Duties of overseer of poor – Poor Law, §§ 15, 16, 17, 94, 95.

§ 345. **City the owner of supplies** – The city shall continue to be the owner of all articles or supplies furnished to any poor person or applicant until the same are consumed. If any person to whom the same shall be furnished shall sell or exchange the same for money, or intoxicating liquor, or in any way dispose of the same other than in the manner directed, such conduct shall be deemed a misdemeanor. (*L.* 1898, *Ch.* 182).

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§ 346. **City not liable**—Nothing contained in this article or the preceding article shall be deemed to make any city liable for the support or relief of any poor person when it is not otherwise so liable. (*L.* 1898, *Ch.* 182).

NOTE—§§ 347-356, inclusive, omitted in White Charter as first enacted.

Provisions of Old Charter as to the support of the poor (L. 1880, Ch. 14, §§ 236-240, inclusive), not printed herein.

Laws may be passed as to charitable institutions—State Constitution, Art. VIII, § 14.

Money may be appropriated for the support of charitable institutions—L. 1895, Ch. 754, as amended L. 1902, Ch. 155.

Poor officers may bind out apprentices—Domestic Relations Law, § 73; but not without court order in Monroe county—L. 1897, Ch. 743.

Commitment of children as vagrants—Penal Code, § 291.

Employment of children in factories—Labor Law, §§ 101-173.

Children may be placed in asylums or homes without judicial proceedings—People ex rel. Horton vs. Fuller, 41 App. Div. 404.

Imitations of natural butter shall not be purchased for use in charitable institutions—L. 1893, Ch. 364.

State industrial school at Rochester—Managers, State Charities Law, § 120; Removal of school from Rochester—L. 1899, Ch. 167, L. 1902, Ch. 527, L. 1903, Ch. 599; Reception of children—People ex rel. Zeese vs. Masten, 70 Hun 580.

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§ 79. **Overseer of the poor**—The overseer of the poor of the city of Rochester and in case of his absence or inability to act, his deputy or assistant, when appointed by the common council, shall have the power to administer an oath to, and examine under oath any person applying to him for relief, and false swearing upon or at such examination shall be deemed willful perjury. He, and in case of his absence or inability to act, said deputy or assistant, shall have the same power to institute

and settle cases of bastardy, as are now or hereafter may be conferred upon the superintendents of the poor of a county and shall possess all the powers and authority of the overseers of the poor in towns. No child in the county of Monroe under sixteen years of age shall be bound out by the superintendent of the poor of Monroe county, the overseer of the poor of said city, an overseer of the poor of any town in said county or any corporation authorized by law to bind out children except upon the order of some court or magistrate of competent jurisdiction. (*As amended L.* 1897, *Ch.* 743).

ARTICLE X

DEPARTMENT OF THE JUDICIARY

NOTE—§§ 357-370, and 378-381, White Charter, as first enacted were repealed by L. 1899, Ch. 581. These sections provided for a city court to supersede the local municipal courts in the cities of the second class. The only section left unrepealed was § 377, which appears below.

POLICE COURT

§ 377. **Judges of the municipal court may act as police justice**—In the absence or inability of the police justice, or in case of a vacancy in his office, either of the city judges, or either of the judges of the municipal court shall perform the duties of such police justice. (*As amended L.* 1903, *Ch.* 19).

NOTE—It is the practice to enter a certificate on the police docket (under § 267, Old Charter, this book, p. 278), whenever the police justice is absent and one of the judges of the municipal court is called on to preside.

NOTE—§§ 382-389, inclusive, omitted in White Charter as first enacted.

§ 390. **Police court**—There shall be a court of criminal jurisdiction, to be known as the "police court," with the jurisdiction and powers hereinafter provided. There shall be one justice of the court. (*As amended L.* 1899, *Ch.* 581).

§ 391. **Police justice; term and salary**—At the city election the office shall be filled by election, and the justice so elected shall hold office for the term of six years, and shall receive an annual salary to be fixed by the board of estimate and apportionment, at not less than twenty-five hundred dollars per annum. (*As amended L.* 1899, *Ch.* 581).

See note as to early of office under § 61, White Charter, this book, p. 76.

§ 392. **Vacancy in office of police justice**—Whenever a vacancy shall occur in the office of police justice, on account of the expiration of the term, or for any other cause, said office shall be filled at the next city election, and the person so elected shall hold office for the term of six years, provided, however, that until the first day of January, subsequent to the said election, the said vacancy shall be filled by the appointment of some qualified and competent person by the mayor. (*As amended L.* 1899, *Ch.* 581).

§ 393. **Qualifications of police justice**—No person shall be eligible to the office of police justice unless he be an elector, and has been an attorney of the supreme court of the state for five years. (*L.* 1898, *Ch.* 182).

§ 394. **Exclusive jurisdiction of police justice**—Subject to the power of removal provided by sections fifty-seven and fifty-eight of the code of criminal procedure, a police justice shall, in the first instance, have exclusive jurisdiction to try and determine all offenses triable in courts of special sessions, and shall have the powers and jurisdiction conferred upon such courts by section fifty-six of the code of criminal procedure, and the police justice, or other officer acting in his place, shall have power to impose any sentence, punishment, *crime, imprisonment, or both, as is provided in such cases by the provisions of the penal code or by special statutes of the state. (*As amended L.* 1899, *Ch.* 581).

Public intoxication is a crime—The Liquor Tax Law, § 30. Ordinance of City of Rochester relating to Public Safety and Good Order, passed May 11, 1857, § 14, People vs. Francis, 102 N. Y. 585; **jury trial may be had**—People vs. Putnam, 3 Parker's Cr. 386, People vs. Francis, 102 N. Y. 585; **jurisdiction of courts of special sessions**—People vs. Mulkins, 25 Misc. 500; **does not make disorderly person under Code Crim. Proc., §§ 899-913**—People ex rel. Shortell vs. Markell, 20 Misc. 140; **persons convicted of drunkenness in Rochester shall be committed to Monroe county penitentiary**—Act in relation to the Monroe county workhouse, L. 1858, Ch. 185, published in full this book, [illegible]. See Index. See also, Old Charter, § 204, this book, p. 274.

*So in session laws. Probably should read "or."

Police justice may sentence for one year and impose fine of five hundred dollars, or both, under Penal Code, § 15—People ex rel. Elliott vs. Webster, Monroe Co. Court, opinion by Sutherland, J., (May, 1901); People ex rel. Lydden vs. Webster, Supreme Court, Monroe special term, opinion by Nash, J., (filed Nov. 28, 1903).

§ 395. **Jurisdiction of police justice**—Every police justice shall also have power to try the following offenses committed within his jurisdiction, namely, cases of malicious mischief or injury; all offenses against public decency; selling unwholesome provisions; breaches of the peace; all violations of the laws and ordinances of the city, and of the board of health thereof, and all other offenses of the grade of misdemeanor under the laws of the state. (*L.* 1898, *Ch.* 182).

Jurisdiction of police justice—Old Charter, § 205, this book, p. 275.

§ 396. **Bastardy proceedings**—Every police justice shall also possess the powers and perform the duties of justices of the peace of towns in cases of bastardy. Such proceedings shall be governed by the provisions of the code of criminal procedure except that they may be held and conducted before either one of the justices with the same force as if two magistrates were present. (*L.* 1898, *Ch.* 182).

Bastardy proceedings—Code Crim. Proc., §§ 838–860, inclusive.

Liability of surety in bastardy proceedings—People ex rel. Ritzenthaler vs. Higgins, 151 N. Y. 571.

§ 397. **Office hours of police justice**—It shall be the duty of the police justice to be present at the police court rooms at such times and for such hours as the public interests may require, unless necessarily detained therefrom. (*As amended L.* 1899, *Ch.* 581).

§ 398. **Police clerk and assistants; powers and duties**—The police justice shall have a clerk of the court who shall be the confidential appointee of said justice, and who shall have the power to take informations upon which warrants for the arrest of persons charged with the commission of a crime may be issued by said justice. The clerk shall also have the

power to issue and sign subpœnas, to administer oaths to witnesses, to make and sign executions, commitments and certificates of conviction and to certify to, and sign, copies thereof for the execution of any judgments rendered in police court, as police justice or as a court of special sessions. The clerk of the court shall receive all penalties and other moneys or fees, and shall pay the same into the city treasury once in each week, and shall cause monthly an itemized account of the same to be published in the official newspapers. The said justice shall have such other clerical assistance as the board of estimate and apportionment may prescribe: all clerks to be appointed by the said justice shall serve during the pleasure of said justice. Said appointment or appointments to be in writing and filed with the clerk of the county in which the city is located, and with the board of estimate and apportionment. Each of said clerks shall give a bond to the city for the faithful performance of the duties of their respective offices, as said duties may be prescribed by the board of estimate and apportionment, with the approval of said justice in such form and for such sums and with such sureties as shall be approved by the board of estimate and apportionment, and shall file the same with the comptroller of the city. The police justice may appoint, and at pleasure remove, a police court attendant, who shall perform such services as may be required of him by the police justice, and shall be subject to the order and control of said justice and of no other person. He shall be in the exempt class of the civil service, and shall receive not less than the salary of a detective or detective sergeant, to be fixed by the board of estimate and apportionment. The police justice may appoint a member of the police department to said position and in such case said appointee shall be paid upon the certificate of the police justice, from the same fund as other police officers, and when he shall retire from office he shall be re-assigned to duty by the chief of police to the rank from which he came. (*As amended L.* 1901, *Ch.* 604).

§ 399. **Jury lists**—Whenever a list is made by the proper officer or officers of the persons who are required to serve as jurors in the courts of record to be held in the county in which the city is situated, a duplicate of such list shall be filed by such officer or officers with the city clerk. The clerk shall immediately make two copies from such list of all the names of jurors therein who are residents of the city, and file one of such copies in the city court and one in the police court. (*L.* 1898, *Ch.* 182).

Act creating commissioner of jurors—L. 1897, Ch. 340; amended, L. 1900, Ch. 565; L. 1901, Ch. 377, excepting the police court of Rochester; L. 1902, Ch. 408.

Disposition of unclaimed fees of jurors—L. 1899, Ch. 150.

§ 400. **Jury trial may be had**—In the police court at the time of interposing any plea which forms an issue of fact, the defendant may demand a trial by jury, and unless so demanded then a trial by jury is waived. (*L.* 1898, *Ch.* 182).

§ 401. **Jury trials**—When a trial by jury is duly demanded as above provided, the police justice at the time presiding in the court must forthwith openly draw such number of ballots as he deems necessary from a box, or other receptacle, containing the names of the persons who are returned as jurors of the city for the courts of record of the county upon the last list thereof filed in such court by the city clerk, as above provided, as jurors to attend for the purpose of trying the issues joined as above stated at a time to which the cause in which issue has been joined shall then be adjourned by him, not more than eight days from the joining of issue, unless the parties consent to a longer adjournment, which consent shall be entered in the minutes of the court. Before drawing such ballots they shall be thoroughly mingled in the box or receptacle containing them. Thereafter, except as herein otherwise provided, and so far as consistent with this act, the provisions of section twenty-nine hundred and ninety-two, twenty-nine hundred and ninety-three, twenty-nine hundred and ninety-four, twenty-

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nine hundred and ninety-five, twenty-nine hundred and ninety-six, twenty-nine hundred and ninety-seven, twenty-nine hundred and ninety-eight, twenty-nine hundred and ninety-nine, three thousand and six, three thousand and seven, three thousand and eight and three thousand and nine of the code of civil procedure shall govern the further proceedings upon the issue joined as above provided. The police justice has the powers and duties conferred and imposed upon justices of the peace under those sections. The venire must be issued in criminal cases to a police officer, who shall have all the powers and duties of constables under those sections. (*L.* 1898, *Ch.* 182).

Note—The sections of the Code of Civil Procedure cited in the above § 401, White Charter, refer to juries in justices' courts.

§ 402. **Pay of jurors**—Jurors in the city court shall receive the same compensation as jurors in justices' courts held by justices of the peace. (*L.* 1898, *Ch.* 182).

As to jurors' fees—Code Civil Proc., § 3329.

§ 403. **Term of certain justices**—The police justices of the cities of Syracuse, Albany, and Rochester, shall continue in office under the powers, provisions and restrictions of this act until the expiration of the term for which they were elected. (*L.* 1898, *Ch.* 182).

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§ 65. **Duties of police clerk; removal of police justice and clerk**—All the fines and penalties imposed by said police justice shall be paid to the police clerk, and all moneys that shall be paid to or received by him as such shall belong to the city of Rochester, and the police clerk shall report, on oath, to the said common council, at the first regular meeting thereof in each month, during the term for which he shall be appointed, the number and names of persons fined, and the names of persons against whom judgment shall have been rendered by said police justice for any

penalty or penalties, with the dates and amounts of such fines and penalties respectively, and all moneys collected or received by him as such police clerk, for fines, or penalties, or otherwise, and shall pay to the treasurer of said city, in each and every week during the term for which the said police clerk shall be elected or appointed, or during which he shall hold said office, all moneys received by him which are hereinbefore declared to belong to said city; which moneys, except as hereinafter otherwise expressly provided, shall be, by said treasurer, credited to the police fund, and any neglect to comply with the provisions of this section shall be good ground for the removal from office of said police clerk. The said police justice may be removed from office by the county court of Monroe county, for official misconduct, neglect of, or unfaithful or insufficient performance of any of his duties, on charges preferred by the common council or by any one or more electors of the said city of Rochester; but notice of such charges against him, and an opportunity of being heard in his defense, shall first be given in such a manner as said court or the judge thereof shall direct. (*L.* 1880, *Ch.* 14).

Fines for cruelty to animals Penal Code, § 668

§ 66. **Police dockets open for inspection; how enforced**—All dockets and other books kept by said police clerk shall, at all times, be subject to the inspection and examination of the city attorney, the common council, or any member thereof, or of the board of police, and it shall be the duty of said clerk to produce such docket or books whenever and wherever the common council or board of police shall direct; and if he shall neglect or refuse to produce such docket or books as required, the county judge of Monroe county may, on application to him for that purpose, make an order requiring the same to be

produced, and enforce obedience thereto, and punish disobedience thereof in the same manner in which obedience to other orders made by him is enforced or disobedience thereof punished. (*L.* 1880, *Ch.* 14).

§ 67. **Sale of unclaimed articles** Upon the order of the police justice it shall be the duty of the police clerk, on the first Monday in November, in every year, to deliver an account, verified by his oath, to the mayor of said city, of all moneys, goods, wares and merchandise then remaining unclaimed in said police office, and immediately thereafter give notice by publishing the same once a week for three weeks in one of the public newspapers printed in the said city of Rochester, to all persons interested or claiming such property, that unless claimed by the owner, with satisfactory proof of such ownership, before a specified day, the same shall be sold at auction to the highest bidder. On the day and at the place specified in such notice, all property remaining unclaimed, except money, shall be sold at auction by said clerk, or under his direction. If any goods, wares, merchandise or chattels of a perishable nature, or which shall be expensive to keep, shall at any time remain unclaimed in said police office, it shall be lawful for said police justice to order the said clerk to sell the same at public auction at such time and after such notice as to said police justice shall seem proper. The said clerk shall, immediately after the sale of any property in accordance herewith, pay to the treasurer of said city all moneys remaining unclaimed in his hands as such police clerk, and all moneys received by him upon such sale, after deducting the expenses thereof. (*As amended L.* 1897, *Ch.* 784).

§ 68. **Stolen property** Upon order of the police justice it shall be the duty of the police clerk, whenever he shall obtain posses-

sion of any stolen property, on his receiving satisfactory proof of ownership, from the owner, to deliver such property to the owner thereof, on his paying all necessary and reasonable expenses which may have been incurred for the preservation and sustenance of such property. (*As amended L.* 1897, *Ch.* 784).

§ 69. **When stolen property to be held as evidence**—No property shall be sold or delivered in pursuance of the foregoing sections if the district attorney of Monroe county shall direct that it shall remain unsold or undelivered for the purpose of being used as evidence in the administration of justice. (*L.* 1880, *Ch.* 14).

§ 260. **Appeal from police court judgments; return and offer on appeal; costs** — An appeal may be taken from any judgment rendered by the police justice in a suit brought to recover any penalty of* forfeiture for the violation of an ordinance of the common council to the county court of Monroe county, within the same time, in the same manner and with the same effect as appeals are taken from justices' judgments to county courts, where a new trial is not had in the appellate court, and the respondent, or his or its attorney, may, within twenty days after the service on it of the notice of appeal, serve upon the appellant, or his or its attorney, in one of the modes prescribed for the service of papers by section seven hundred and ninety-seven of the code of civil procedure, a written stipulation that the judgment appealed from may be reversed, in whole, or in part, as therein specified, with two dollars costs and disbursements, and within five days thereafter, the appellant, or his or its attorney, shall serve upon the respondent's attorney a written notice that said offer is accepted, and in that event, upon filing

*So in the original.

the offer and acceptance and proof of service thereof, within the time aforesaid, judgment may be entered by the clerk of the county court in accordance with the offer, but in case said offer is not accepted, the appeal may be brought to a hearing at any term of the county court, and in case the appellant does not obtain a more favorable judgment upon said appeal, exclusive of any costs or disbursements of said appeal, than as stated in said offer, the respondent shall be entitled to the costs and disbursements of said appeal. The same proceedings shall be had as is provided in articles first and second of title eight of chapter nineteen of the said code of civil procedure, except as is herein otherwise specially provided. A return shall be made to said county court by said police justice, in the same manner and time in which justices of the peace are required to do upon appeals taken from their judgments to county courts, and said police justice shall receive the sum or fee of two dollars for making such return, and which shall be paid by him into the city treasury to the credit of the contingent fund. Upon any appeal provided for herein the award of costs is regulated as follows:

1. If the appeal is dismissed because neither party brings it to a hearing, as prescribed in section three thousand and sixty-two of the code of civil procedure, costs shall not be awarded to either party.

2. If the judgment is reversed for an error in fact, not affecting the merits, or if a new trial is directed before the police justice, the costs of the appeal, not exceeding fifteen dollars in amount, are in the discretion of the appellate court.

3. If the judgment is affirmed, costs must be awarded to the respondent.

4. If the judgment is reversed, except upon an offer made as herein specified, costs must be awarded to the appellant.

5. If the judgment is affirmed only in part, the costs, or such a part thereof as to the appellate court seems just, not exceeding ten dollars, besides disbursements, may be awarded to either party.

6. Upon such an appeal, costs, when awarded must be as follows, besides disbursements:

(1) For all proceedings before notice of argument, five dollars.

(2) For all proceedings after notice and before argument, five dollars.

(3) For argument, ten dollars.

Upon an appeal taken as aforesaid either party may, at any time after the return is filed in the appellate court, and before the argument, serve upon the adverse party a written offer to allow judgment to be taken for a sum, or to the effect therein specified, with or without costs. If the party receiving the offer, within five days thereafter, serve upon the adverse party notice that he accepts it, he may file it with proof of acceptance, or the adverse party may file it and the notice of acceptance and proof of receipt thereof; and thereupon the clerk must enter judgment accordingly. If the offer is not thus accepted it cannot be proved upon the argument, and if the party to whom it was made fails to obtain a more favorable judgment than is stated in said offer he cannot recover costs from the time of the offer, but he must pay costs from that time. This section as amended shall apply to any judgment heretofore as well as hereafter rendered by said police justice. (*Amended L.* 1881, *Ch.* 343; *L.* 1890, *Ch.* 561).

§ 262. **Vagrants defined; how punished**—All persons being habitual drunkards, destitute, and without visible means of support, or who shall abandon, neglect or refuse to aid in the support of their families, being com-

plained of by such families; all able-bodied beggars, who may apply for alms or solicit charity; all persons wandering abroad, lodging in watch-houses, out-houses, market-places, sheds, stables, or uninhabited dwellings, or in the open air, and not giving a good account of themselves; all common brawlers and disturbers of the public quiet; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, or other public places, or beg or receive alms within the said city, shall be deemed vagrants, and may upon conviction before the police justice of such city, be sentenced to confinement in the Monroe county penitentiary, for any time not exceeding sixty days, at hard labor. (*L.* 1880, *Ch.* 14).

§ 263. **Disorderly persons defined; punishment; payments to overseer of the poor for the support of family; undertaking; suits**—Every person who shall threaten to abandon or who shall have actually abandoned his family, wife or children in the city of Rochester without adequate support, or in danger of becoming a burden upon the public, or who may neglect to provide according to his means for his family, wife or children is hereby declared to be a disorderly person within the meaning of section eight hundred and ninety-nine of the code of criminal procedure, and may be proceeded against as such in the manner directed by title seven of said code. In case of the conviction of any such person as a disorderly person, the magistrate convicting shall make an order specifying a certain amount to be paid to the overseer of the poor of said city, weekly for and towards the support of the family, wife or children of said defendant for the period of one year, and the undertaking directed to be given by subdivision one of section nine hundred and one of said code upon the conviction of such person shall be to the effect that the defendant

will pay to said overseer of the poor said weekly sum, as aforesaid, for and during said period of one year. The amount of such weekly allowance or payment may at any time be increased by order of the police justice, or person acting in his place upon application of such family, wife or children, and upon notice of at least five days to the defendant and the surety or sureties to such undertaking given as aforesaid, to be served either personally, or by leaving it at his or her place of residence or inclosed in a postpaid wrapper, addressed to such person not served personally or at the place of residence, at the city of Rochester, New York, and every such undertaking shall apply to any and every such increased amount. When any suit is brought upon any such undertaking the amount for which judgment shall be rendered shall be the weekly sum then unpaid under the terms of said undertaking, with the costs of the suit, and successive actions may be brought upon said undertaking by the overseer of the poor of the city of Rochester, as such weekly payments shall become due under the terms of said undertaking. (*As amended L.* 1890, *Ch.* 561).

Proceedings concerning disorderly persons—Code Crim. Proc., §§ 899-913; **public intoxication not within code provisions as to disorderly persons**—People ex rel. Shortell vs. Markell, 20 Misc. 149.

§ 264. **Convicted persons in city confined in Monroe county penitentiary**—Persons convicted of any criminal charge, on conviction, or upon conviction for violation of the laws of this state, in the said city, shall be confined in the Monroe county penitentiary in the same manner as when committed by the justices of any town in said county. (*L.* 1880, *Ch.* 14).

Maintenance of prisoners sent to Monroe county penitentiary—L. 1874, Ch. 463. Published in full, this book, *post*. See also, Old Charter, § 71, this book, p. 134.

Jurisdiction of police justice—White Charter, §§ 304 and 305, this book, pp. 203 and 204.

§ 265. **Jurisdiction of police justice; stenographer; trials** The police justice of said city shall have jurisdiction in any suit brought for a penalty of* forfeiture given for the violation of any city ordinance, or of the laws concerning the internal police of the state and is hereby empowered to hold courts of special sessions for the trial of all offenses triable in a court of special sessions. Every court of special sessions held by said police justice, or by one of the judges of the municipal court of said city, or the mayor or one of the police commissioners or aldermen in the place of said police justice, as is provided by section two hundred and sixty-seven of this act, shall, subject to the powers of removal provided for in chapter one of title six of part one of the code of criminal procedure, have exclusive jurisdiction to hear, try and determine all charges of misdemeanor and such other offenses or crimes punishable as such, as are defined by section fifty-six of the code of criminal procedure, or other statute now or hereafter passed, where the offense has been committed within the city of Rochester, and of petit larceny committed as a second offense within said city, and the complaint has been made to said police justice, or one of the officers acting in his place, or one of the judges of the municipal court; and the said police justice, or other officer acting in his place, shall have power to impose any sentence, punishment, fine, imprisonment, or both, as is provided in such *causes by the provisions of the penal code or by the special statutes of this state. The police justice of said city may issue an execution upon any judgment heretofore or hereafter rendered by a police justice of said city. The board of police commissioners shall have power to appoint, from time to time, a stenographer, who shall perform such duties as they shall, from time to time, require of him. The police magistrate or person

*So in the session laws.

Jurisdiction of police justice—Continued

acting in his stead, shall have power to require such stenographer to take the evidence in all criminal cases or proceedings pending before him, and shall have power to require such stenographer to transcribe his shorthand notes, and deliver to the district attorney of the county of Monroe a copy of such transcript, and shall have power to require such stenographer to transcribe his notes and deliver a copy thereof to the defendant in any action, upon the payment to the clerk of such police court of the sum of ten cents per folio for each folio of such transcript. The salary of such stenographer shall be fixed by said board of police commissioners, and shall be paid in the same manner in which the salary of the police clerk is now paid. In any action brought for the violation of any ordinance, or of the laws concerning the internal police of the state as aforesaid, a trial by jury may be had upon the demand of either party, made before the actual commencement of such trial, and such trial shall be conducted in the manner provided for trials by jury in justices' courts by the code of civil procedure, and the jurors summoned, as well as those acting or sitting upon the trial, and the officer executing the venire and attending the jury, which officer may be one of the members of the police force of said city, to be nominated by said police justice, shall be entitled to the fees allowed by law to jurors and constables for similar services in trials by jury before justices of the peace or justices' courts, and which fees shall be paid to the said police justice for the purposes aforesaid by the party demanding such jury trial, at the time such demand is made, and upon the failure to pay the same, such demand for a trial by jury shall be disregarded, but the fees allowed to said officer, if he be one of the members of said police force of said city for summoning or attending upon such jury, shall be retained by the police clerk and be paid by him to the

treasurer of said city to the credit of the contingent fund. The municipal court of said city shall also have jurisdiction of all suits brought for a violation of any regulation, by-law or ordinance passed, enacted or adopted by the common council, board of health or executive board of said city, where the sum for which judgment is demanded in the complaint does not exceed ten hundred dollars, exclusive of costs; provided the same be instituted by or under the direction of the corporation counsel, or said common council, board of health or executive board. Cases in said police court involving the trial or commitment of children under any of the provisions of sections two hundred and eleven, two hundred and twenty-three, subdivision four; two hundred and seventy-eight, two hundred and eighty-two, two hundred and eighty-seven, two hundred and eighty-eight, two hundred and eighty-nine, two hundred and ninety, two hundred and ninety-one, two hundred and ninety-two, three hundred and seventeen, four hundred and nine or four hundred and ten of the penal code of this state, or section eight hundred and eighty-seven of the code of criminal procedure of this state, shall be heard and determined by said court separately and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept; said trial shall be held at such place or places as the common council may, from time to time designate, and at such suitable times as shall be designated therefor by such court. The police clerk shall have the same power as the police justice to subpœna witnessess and issue executions upon judgments of said police court; said clerk shall also have the power to administer the oath to witnesses sworn in said court. (*As amended L.* 1897, *Ch.* 784).

Note on § 265, *supra* — The White Charter has superseded this section, in part at least, viz.: Judges of the municipal court shall sit in case of vacancy

§ 377), jurisdiction in case of all misdemeanors no longer exclusive (§ 395); the stenographers and clerks are appointed by the police justice (§ 398), stenographer's salary is fixed by the board of estimate (§ 98), jury trial may be demanded without regard to fees (§ 400).

§ 266. **Execution of criminal warrants out of municipal and police courts; police clerk may administer oath for warrant**—Upon any criminal warrant, duly issued by one of the judges of the municipal court, or by the police justice, or any person legally acting in his stead, any peace officer, including any member of the police department authorized to serve the same, may execute such warrant in any part of this state, without further indorsement or warrant. The police clerk is hereby authorized to administer the oath, upon application for a warrant, issuable from the police court, or by the police justice, or any person legally acting in his stead. (*Amended L.* 1882, *Ch.* 120; *L.* 1892, *Ch.* 190).

§ 267. **Absence of police justice shall be noted in docket**—A judge of the municipal court, the mayor, one of the police commissioners, or aldermen shall have all the jurisdiction, authority and power of the police justice on the production to such judge, mayor, commissioner or alderman, of the certificate of the police justice, police clerk, superintendent of police or acting superintendent of police of the *absense of the police justice from the city or of his inability to act by reason of his illness or otherwise, which certificate shall be in writing and be filed with the police clerk before the issuing of any process or proceeding in any manner in such case. Such certificate shall be entered at length in the docket and record of proceedings, kept by the police clerk, and a copy thereof made a part of the return to any writ of certiorari or return of any kind in such case, but it shall not be necessary to recite or

*So in the original.

mention the same in any warrant or process or proceeding. Such judge, mayor, commissioner, or alderman shall issue process and record proceedings in his proper name of office as judge, mayor, commissioner, or alderman, and shall continue to act in place of the police justice until the production to him of the certificate of the police justice in writing of his ability to act, which certificate shall likewise be filed with the police clerk and entered in the said docket, and thereupon matters pending undetermined before the said person acting in place of the police justice under this section, shall proceed before such police justice, de novo, from the return of the warrant or process or the making of the arrest. The person acting under this section in the place of the police justice, while so acting, shall occupy the office of the police justice, and shall not do any official act in a criminal case elsewhere upon a trial, hearing or determination. (*As amended L.* 1895, *Ch.* 561).

Note.—In the absence of the police justice one of the municipal court judges now presides in police court under White Charter, § 375, this book, p. 402.

MUNICIPAL COURT

NOTE—Under authority of the State Constitution, the legislature established the Municipal Court of the city of Rochester, by L. 1870, Ch. 196. This act was consolidated with the Old Charter by L. 1880, Ch. 14, and the said court has been in continuous existence since. The White Charter, as first enacted, created a uniform "City Court" for all cities of the second class (L. 1898, Ch. 182, §§ 357-381), which was to supersede the Municipal Courts of Rochester and Syracuse, the City Court of Albany, and the Justice's Court of Troy. Before the White Charter went into effect these provisions were all repealed, excepting § 377 (L. 1899, Ch. 581), which repeal left in force that portion of the Old Charter of the City of Rochester relating to the Municipal Court.

The rules of practice in the Municipal Court are simple, but for public convenience it may be well to note that at ten o'clock, A. M., each week day, all cases first returnable are called, and at ten-thirty, all adjourned cases, except Saturdays. On Saturdays there is only one call of the calendar, at ten o'clock, A. M. No causes are tried on Saturday, and the Court is closed Saturday afternoons. Causes for trial are preferred as follows: (1) jury trials, (2) bastardy proceedings (no longer heard, under L. 1903, Ch. 297), (3) partially tried causes, (4) all other causes, in order of their dates of issue.

The Municipal Court has greater powers than justices' courts. It has jurisdiction to the amount of fifteen hundred dollars; trial fee and statutory costs are allowed (no trial fee being allowed when a party appears only in person); its judges can charge a jury on questions of law, direct a verdict, open defaults, and have ten days to render judgments. The court has jurisdiction over non-resident defendants, when served within the city of Rochester, and in this respect its power is greater than that of the County Court. For all amounts under fifty dollars said court is practically a court of last resort, for in such cases appeal lies on questions of law only, and no new trial can be demanded.

It should be observed that the State Constitution of 1894 forbids the legislature from creating local inferior courts as courts of record or from conferring on such courts any equity jurisdiction. *Quaere*—Can the Municipal Court now foreclose mechanics' liens under § 245, Sub-div. 14, Old Charter (re-enacted L. 1903, Ch. 297. See this book, p. 285), or possess the powers of the Supreme Court for the purpose of foreclosing

the equity of redemption of all lands sold for taxes and assessments and bid in by the city, as set forth in § 104, Old Charter (as amended, L. 1896, Ch. 561. See this book, p. 264).

The powers and practice of the Municipal Court are fully set forth in the provisions of the Old Charter, which, as amended to date, are as follows:

§ 241. **Municipal court.** A court of civil jurisdiction, to be known as the "municipal court of the city of Rochester," is continued and established in and for said city, with the jurisdiction and powers hereinafter provided, and the further jurisdiction and powers to have any and all process or papers issued by the clerk, deputy clerk, or one of the judges, executed and served anywhere within the county of Monroe, and all process and papers issued may be directed to and served by any constable of any ward within said city, or any town within said county, or by the sheriff of said county or any of his deputies. The two judges of the said court now in office shall hold the said court in the said city as hereinafter provided. (*Amended L.* 1890, *Ch.* 561; *L.* 1894, *Ch.* 281).

See Code Civil Proc., §§ 3220-3227.

The jurisdiction of the municipal court is limited to the city of Rochester—Baird vs. Heifer, 12 App. Div. 23; Ziegler vs. Corwin, 12 App. Div. 60.

Note—The decisions noted, *supra*, were under the old constitution. Jurisdiction of local courts changed by present state constitution. Art. VI, § 18.

§ 242. **Judges; term and oath of office.** There shall be two judges of the municipal court to be elected as hereinafter provided. The judges now in office shall hold their offices for the respective terms for which they were elected. The judges appointed or elected as provided in the charter shall take the oath of office prescribed by law before entering upon their duties, and file the same in the Monroe county clerk's office. (*As amended L.* 1901, *Ch.* 574).

Oath of office shall be filed with city clerk —Public Officers Law, § 10; failure to take oath—Penal Code §§ 42, 43; effect on official acts of failure to take oath—Public Officers Law, § 15.

§ 243. **Election of judges**—At the city election next preceding the end of the term of office of a judge of the municipal court, the said office shall be filled by the election of a judge of the municipal court by electors of the city, and the person so elected shall hold the office for the term of six years, commencing on the first day of January, next thereafter. (*As amended L.* 1901, *Ch.* 574).

§ 244. **Vacancies; how filled**—Whenever a vacancy shall occur in the said office, the same shall be filled by election at the next city election in the said city held after the happening of such vacancy, and the person so elected shall hold the office from the first day of January next after his election until the expiration of six years from the said first day of January thereafter. The mayor of the city in case of a vacancy shall appoint a person to hold the office from the date of the appointment until the first day of January following the next city election. (*As amended L.* 1901, *Ch.* 574).

§ 245. **Jurisdiction of the municipal court**—It shall be the duty of each of said judges to hold a court in and for said city of Rochester, to be called the municipal court of the city of Rochester. Each of said judges may hold a separate court at the same time. Said court shall be open for business each day (Sundays and legal holidays excepted) at nine o'clock in the forenoon, and continue open during seasonable hours for the transaction of business, and shall have jurisdiction in civil actions and proceedings, and criminal proceedings, as follows: (*As amended L.* 1903, *Ch.* 297).

1. In all civil actions and proceedings cognizable by law, by justices of the peace or justices' courts of towns or formerly of said city. (*As amended L.* 1903, *Ch.* 297).

2. In actions arising on contracts, express or implied, including an order, decision or judgment of any court of record, or a judge thereof, granting or directing the payment of any sum of money to any party or person for the recovery of money only, if the amount for which judgment is claimed does not exceed one thousand five hundred dollars, exclusive of costs; and also in actions of breach of contracts, express or implied, where the damages claimed and for which is demanded in the complaint do not exceed one thousand five hundred dollars, exclusive of costs. (*As amended L.* 1903, *Ch.* 297).

3. In a matter of account, when the sum total of the accounts of both parties, proved to the satisfaction of the court, does not exceed one thousand five hundred dollars. (*As amended L.* 1903, *Ch.* 297).

4. In actions for damages for injury to rights pertaining to the person or to personal or real property, or for the conversion of personal property, if the amount for which judgment is demanded in the complaint, exclusive of costs, does not exceed one thousand five hundred dollars. (*As amended L.* 1903, *Ch.* 297).

5. In an action for a penalty or penalties where the amount for which judgment is demanded in the complaint, exclusive of costs, does not exceed the sum of one thousand five hundred dollars, besides costs. (*As amended L.* 1903, *Ch.* 297).

6. In an action upon the bond or undertaking conditioned for the payment of money where the amount for which judgment is demanded in the complaint, exclusive of costs, does not exceed one thousand five hundred dollars, though the penalty exceed that sum, the judgment to be given for the sum actually due. Where payments are to be made by

installments, an action may be brought for each installment as it becomes due. (*As amended L.* 1903, *Ch.* 297).

7. In an action upon a surety bond or undertaking taken by said court, or one of the judges thereof, or a justice's court or a justice of the peace or any other court, or judge, or justice, except where it is otherwise specially provided by law, when the amount for which judgment is demanded in the complaint, exclusive of costs, does not exceed the sum of one thousand five hundred dollars. (*As amended L.* 1903, *Ch.* 297).

8. In an action upon a judgment rendered in a court of record or not of record, including said municipal court, a justice of the peace or the police justice of said city, where such an action is not prohibited by the code of civil procedure. (*As amended L.* 1903, *Ch.* 297).

9. To take and enter judgment on the confession of a defendant, when the amount confessed, exclusive of costs, shall not exceed one thousand five hundred dollars. Such confession to be in the manner prescribed by section three thousand and eleven of the code of civil procedure, and to have the same effect as is provided by section three thousand and twelve of said code. (*As amended L.* 1903, *Ch.* 297).

10. In an action for damages for fraud in the sale, purchase or exchange of real or personal property, if the amount for which judgment is demanded in the complaint, exclusive of costs, does not exceed one thousand five hundred dollars. (*As amended L.* 1903, *Ch.* 297).

11. In an action commenced by an attachment of property, as now provided by statute, if the amount for which judgment is demanded in the complaint, if one be served with the summons, exclusive of costs, or the debt or damage claimed in the affidavit does not exceed the sum of one thousand five hundred dollars. (*As amended L.* 1903, *Ch.* 297).

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12. In an action to recover possession of personal property claimed, the value of which as stated in the affidavit by or on behalf of the plaintiff when a requisition is issued in the action, or in other case in the complaint, shall not exceed the sum of one thousand five hundred dollars, the same proceedings to be had as are provided for justices' courts by article fifth of title two of chapter nineteen of the code of civil procedure, except as is otherwise specified in this act. (*As amended L.* 1903, *Ch.* 297).

13. In summary proceedings under title two of chapter seventeen of the code of civil procedure, to recover possession of real property, and to remove tenants and others, the process to be made returnable and proceedings and judgment to be had and given before and by said court by its proper title. (*As amended L.* 1903, *Ch.* 297).

14. In actions or proceedings under the code of civil procedure or any statute as now existing, or that may hereafter be amended or passed, for the protection or enforcement of the liens of mechanics and others, including article second of title two of chapter fourteen of said code where the amount of the lien does not exceed the sum of one thousand five hundred dollars, the same proceedings to be had as are or may be provided by said code or statutes. (*As amended L.* 1903, *Ch.* 297).

Note. § 245, Old Charter, amended L. [illegible] Ch. 301, and L. 1894, Ch. 28, contained subdivisions 15, in regard to bastardy proceedings, 16, in regard to removal of constables, 17, authorizing judges to solemnize marriage. These subdivisions were not re-enacted in last amendment [illegible] L. 1903, Ch. 297.

Inferior local courts hereafter shall not be made courts of record nor have equity jurisdiction. State Constitution, Art. VI, § 18.

Charter provisions existing before the constitution may be amended afterwards. The constitution does not have a retroactive effect.—People ex rel. Lardner vs. Carson, 10 Misc. [illegible] affirmed 153 N. Y. 101.

Facts necessary to jurisdiction will not be presumed, but must be proved—Beaudrias vs Hogan, 16 App. Div. 38.

Jurisdiction in suits for violations of ordinances—Old Charter, §§ 205 and 238, this book, pp. 277 and 301.

§ 246. **Process; practice; appeals; judgments; pleadings; amendment; execution; bill of particulars; offer of judgment; evidence of records or proceedings of court; direction of verdict**—Process shall be made returnable before said court by its proper title, and shall be signed by a judge or by a clerk or deputy clerk of said court; either of said judges may hold said court, and may hear, try and determine any case or proceeding brought in said court, when there is no demand made for a jury, or preside at a trial by jury; but in case of proceedings in bastardy, said judges shall associate together for the trial and determination of the same. The process, pleadings, practice, trial by the court or jury, fees, costs and disbursements, judgment by action or confession, and proceedings thereon, shall be the same as are now provided by law for justices' court, except as otherwise provided in this act. In cases where the defendant is required by law to give bail on application for an adjournment, the amount of the penalty of the bond shall be fixed by the court, but shall not in any case exceed five hundred dollars. Appeal may be had from any judgment obtained in said court to the county court of Monroe county, in the same cases, in the same manner, and with like effect as appeals are now had by law from judgments obtained in justices' courts. This court shall not have cognizance of any action where the title to real property shall come in question; but where such question arises, the pleadings and practice shall be the same as are now provided by law for justices' courts in regard thereto. The clerk of said court, on the demand of a party in whose

favor judgment shall have been rendered, shall give a transcript thereof, which may be filed and docketed in the office of the clerk of Monroe county. The time of the receipt of the transcript by said clerk shall be noted thereon and entered in the docket, and from that time the judgment shall be a judgment of the county court. A certified transcript of such judgment may be filed and docketed in the clerk's office of any other county, and with the like effect, in every respect, as in the county where the judgment was rendered, except that it shall be a lien only from the time of filing and docketing the transcript. But no such judgment for a less sum than twenty-five dollars, exclusive of costs, shall be a lien upon, or enforced against real property. The pleadings in said municipal court shall be :

1. The complaint by the plaintiff ; and,
2. The answer by the defendant.

The pleadings may be oral or in writing ; if oral, the substance thereof shall be entered in the docket of the court ; if in writing, they shall be filed, and a reference to them shall be made in the docket, but such pleadings need not be verified except as hereinafter provided. The complaint shall state, in a plain and direct manner, the facts constituting the cause of action. The answer may contain a denial of the complaint, or any part thereof, and also notice, in a plain and direct manner, of any facts constituting a defense or counter-claim. Either party may demur to the pleadings of his adversary, or to any part thereof, when it is not sufficiently explicit to enable him to understand it, or it contains no cause of action or defense, although it be taken as true. If the court deem the objection well founded, it shall order the pleading to be amended ; and if the party refuse to amend, the defective pleading shall be disregarded. In case a defendant does not appear and answer, the plaintiff cannot recover (except as otherwise hereinafter provided) without proving his case.

Process, practice, etc., of municipal court—Continued

In an action or defense founded upon an account or an instrument for the payment of money only, it shall be sufficient pleading for a party to deliver the account or instrument to the court, and to state that there is due to him thereon, from the adverse party, a specified sum which he claims to recover or set off. A variance between the proof on the trial and the allegations in a pleading shall be disregarded as immaterial, unless the court shall be satisfied that the adverse party has been misled to his prejudice thereby. The pleadings may be amended at any time before the trial, or during or upon appeal, when by such amendment substantial justice will be promoted. If the amendment be made after the joining of issue, and it be made to appear to the satisfaction of the court, by oath, that an adjournment is necessary to the adverse party in consequence of such an amendment, an adjournment shall be granted. The court may also, in its discretion, require, as a condition of amendment, the payment of costs to the adverse party. Execution may be issued on a judgment heretofore or hereafter rendered by said municipal court at any time within five years after the rendition thereof, and shall be returned sixty days after the date of the same. If the judgment be docketed with the county clerk, the execution shall be issued by him to the sheriff, of the county, and have the same effect, and be executed in the same manner as other executions and judgments of the county court. The court may, at the joining of issue, require either party, at the request of the other, at that or some other specified time, to exhibit his account on demand, or state the nature thereof as far forth as may be in his power, and in case of his default preclude him from giving evidence of such parts thereof as shall not have been so exhibited or stated. The defendant may, on the return of process and before answering, make an offer in writing

to allow judgment to be taken against him for an amount to be stated in such offer, with costs. The plaintiff shall thereupon, and before any other proceedings shall be had in the action, determine whether he will accept or reject such offer. If he accept the offer and give notice thereof in writing, the clerk shall file the offer and the acceptance thereof, and judgment shall be rendered accordingly. If notice of acceptance be not given, and if the plaintiff fail to obtain judgment for a greater amount, exclusive of costs, than has been specified in the offer, he shall not recover costs, but shall pay to the defendant his costs accruing subsequent to the offer. The forms of action, parties to actions, the rules of evidence, the times of commencing actions and the service of process upon corporations as established by the code of civil procedure, shall govern the practice in this court. Any certificate by the said clerk or one of the judges of said court under his hand, of any fact or matter concerning the records or proceedings of the court, or any paper appertaining thereto filed with said clerk or judge or of the docket, shall be received in evidence in all courts and places, and be of the same force and effect as if said court was a court of record, and such certificate was made by the clerk thereof with the official seal attached. But said judges or either of them, in any action or proceeding upon a trial by jury before either of them, shall have a right and it shall be their duty, or the duty of either of them, in a proper case, and for like cause, to direct the verdict of a jury, as to the manner of rendering the same, and as to the amount thereof, in the same manner, and to the same effect, and subject to the like objections and exceptions, as the verdict of a jury in the courts of record in this state. (*As amended* L. 1890, *Ch.* 561; L. 1892, *Ch.* 701).

Municipal court cannot grant second adjournment against defendant's objection—Morris vs. Hays, 14 App. Div. S.

Old Charter

Venire in action between city and a town—Code Civil Proc., § 2992.

§ 247. **Verified complaint; how served**—In an action brought in this court, arising on contract for the recovery of money only, or upon account, the plaintiff, at the time of issuing the summons, may file with the clerk of said court a written complaint, setting forth in a plain and concise manner the facts or items of account constituting the cause of action, specifying the amount actually due from the defendant to the plaintiff, and for which the plaintiff will demand judgment. Such complaint shall be subscribed by the plaintiff or his attorney, and shall be verified in the manner prescribed by the code of civil procedure for courts of record. Said summons and complaint shall be served at the same time by delivering to, and leaving with, the defendant personally a copy thereof, and may be served by any person of full age not a party to the action. (*L.* 1880, *Ch.* 14).

§ 248. **Answer to verified complaint**—In case the defendant appears and answers said complaint, such answer shall be in writing and subscribed by the defendant or his attorney, and shall be verified as above provided for the verification of the complaint; and shall contain, first, a general or specific denial of each material allegation of the complaint, controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief; second, a plain statement of any new matter constituting a defense or counterclaim. (*L.* 1880, *Ch.* 14).

§ 249. **Proceedings on default; verified complaint; proof of service; statute of limitations**—In case the defendant fails to answer the complaint as herein provided, he shall be deemed to have admitted the allegations of the complaint, and the court, upon the filing of the summons and complaint, with the proof of the

due service thereof, shall forthwith enter judgment for the plaintiff for the amount demanded in the complaint, with costs and disbursements, without further proof. When the service of the said summons and complaint is made by any person other than a constable, proof of such service shall be made by affidavit, in which affidavit he shall state that such person is over twenty-one years of age, when and at what particular place and in what manner he served the same, and that he knew the person mentioned and described in the summons as defendant therein, and that he delivered to, and left with, such defendant a copy thereof. When the service is made by a constable, his certificate showing when and at what particular place, and in what manner he served the same, and that he knew the person mentioned and described in the summons as the defendant therein, and that he delivered to, and left with, such defendant a copy thereof, shall be sufficient proof of the service of such summons and complaint. Every pleading shall be subscribed by the party or his attorney; if by attorney, such attorney shall have been admitted to practice in the supreme court of this state. Whenever any judgment of said court has been, at any time heretofore, or shall be any time hereafter, filed and docketed in the office of the clerk of Monroe county, the said judgment shall become a judgment of the county court of Monroe county, and any suit, action or proceeding thereon may be had, taken or instituted at any time within twenty years from the rendition of said judgment by said municipal court, the same as if said judgment had been rendered by said county court. (*As amended L.* 1892, *Ch.* 196).

§ 250. **Costs and fees in municipal court**—In all actions brought in this court there shall be allowed by way of indemnity to the prevailing party and included in the judgment, the following sums as costs:

Costs in municipal court- Continued

1. When the damages recovered amount to twenty-five dollars, but do not amount to one hundred dollars, the sum of three dollars. (*As amended L.* 1892, *Ch.* 701).

2. When the damages recovered amount to one hundred dollars, and do not amount to three hundred dollars, the sum of five dollars. (*As amended L.* 1892, *Ch.* 701).

3. When the damages recovered amount to three hundred dollars, and do not amount to five hundred dollars, the sum of seven dollars. (*As amended L.* 1892, *Ch.* 701).

4. When the damages recovered amount to five hundred dollars, and do not amount to seven hundred dollars, the sum of ten dollars. (*As amended L.* 1892, *Ch.* 701).

5. When the damages recovered amount to seven hundred dollars, or over, the sum of fifteen dollars. (*As amended L.* 1892, *Ch.* 701).

6. When issue has been joined and an actual trial had upon a question of fact, there shall be allowed to the plaintiff, in addition to the sums hereinbefore specified where the damages recovered *does not amount to the sum of two hundred dollars, the sum of five dollars. (*As amended L.* 1892, *Ch.* 701).

7. When the damages recovered amount to two hundred dollars, and do not amount to the sum of four hundred dollars, the sum of seven dollars. (*As amended L.* 1892, *Ch.* 701).

8. When the damages recovered amount to four hundred dollars, and do not amount to seven hundred dollars, the sum of ten dollars. (*As amended* 1892, *Ch.* 701).

9. When the damages recovered amount to seven hundred dollars, and over, the sum of fifteen dollars. (*As amended L.* 1892, *Ch.* 701).

*See session laws

10. And if on such trial, the defendant prevails, he shall be entitled to have judgment against plaintiff for the amount of the fees and disbursements allowed the defendant by law, and also additional costs as follows: (*As amended L.* 1892, *Ch.* 701).

11. When the plaintiff shall have demanded in his complaint, or sought to obtain upon the trial, judgment against the defendant for any amount under two hundred dollars, the sum of five dollars, and when two hundred dollars, and less than four hundred dollars, the sum of seven dollars; and when four hundred dollars, and less than seven hundred dollars, ten dollars; and when over seven hundred dollars, fifteen dollars. (*As amended L.* 1892, *Ch.* 701).

12. For the actual trial of an issue of fact, joined in a summary proceeding, the sum of five dollars. But neither of the trial fees above mentioned shall be allowed to the prevailing party, unless he appears by attorney, or by the clerk of any attorney; and the said judges, or either of them, may direct that the pleadings on the joinder of any issue shall be in writing, and filed, and, when a judgment of nonsuit, or no cause of action, is rendered on such trial, the defendant shall be entitled to have judgment entered against the plaintiff for the amount of the fees, costs and disbursements allowed the defendant by law, and, also, the additional costs provided for in this act. (*As amended L.* 1892, *Ch.* 701).

13. In all actions and proceedings within the jurisdiction of a justice's court of the cities and towns of this state, the said city may charge and collect, and there shall be paid into said court, the same fees and costs as provided by law for justices' courts, as provided in and by this act, except as herein otherwise provided, and in addition thereto, said clerk, or deputy clerk, shall be entitled to demand,

and there shall be paid into said court, for the use and benefit of the city, the following fees and costs: For the actual trial of an issue of fact, when the amount demanded by either of the parties in their respective pleadings, is over one hundred dollars, to be paid by the party or parties demanding the same, twenty-five cents for each additional hundred, or part thereof, so in excess of one hundred dollars. (*As amended L.* 1892, *Ch.* 701).

14. And for entry of judgment by default; for any sum less than one hundred dollars, the same fees as are now required by law in justices' court, and the sum of twenty-five cents for each additional hundred dollars, or part of a hundred dollars. (*As amended L.* 1892, *Ch.* 701).

§ 251. **Issuing criminal warrants; power over constables; contempt**—Either of said judges may issue a criminal warrant upon due complaint for the arrest of any person charged with crime committed within the county of Monroe, but such warrant must be signed by the judge hearing the complaint, and made returnable before the justice of the police court of said city. Said judges, or either of them, may command the services of any constable of said city to enforce the authority of said court and to maintain the peace; and they, or either of them, shall have power to punish for contempt to the same extent as justices of justices' courts. (*L.* 1880, *Ch.* 14).

§ 252. **Clerk and stenographers**—The said court may have a clerk to be appointed by said judges, said appointment to be in writing and filed with the clerk of Monroe county. He shall take the usual oath of office, and file the same in said clerk's office, and shall hold said office during the pleasure of said judges, and shall give bail for the faithful performance of his duty in such form, and for

such sum and with such sureties, as shall be approved by said judges, and file the same with the treasurer of said city. It shall be the duty of said clerk to keep the docket of said court, of all proceedings in any action or proceeding brought in said court, and to enter in said docket the judgments and decisions of said court. And said docket shall be evidence in the courts of this state to the same extent as the docket of a justice of the peace. It shall also be the duty of said clerk, and the deputy or deputies hereinafter mentioned, to keep a record and account of all moneys paid into said court, or received by said clerk or deputy clerk. The said clerk, being the custodian of the moneys coming into said court, to whom the deputies hereinafter mentioned shall report and account for the moneys coming into their hands as deputy clerks or clerks of said court. The said judges may appoint, and at pleasure remove, one, and if said judges shall deem it necessary, two stenographers for said court, each of whom shall be a deputy clerk of said court. The said judges shall file a certificate of the appointment or removal, so made by them, in the office of the clerk of Monroe county. Before executing the duties of this office, each stenographer, so appointed, shall take and subscribe the constitutional oath of office, and file the same with the clerk of said county, and shall give bail for the faithful performance of his duty, in such form, and for such sum, and with such sureties, as the judges of said court shall approve, and file the same with the treasurer of said city. It shall be the duty of such stenographer to take stenographic minutes of the testimony and other proceedings in all cases tried before the court, except when the judge sitting at the trial shall dispense with his services. He shall transcribe fully and at length the minutes of each case so taken by him, in written or printed characters, when so directed by the court and file the same with the clerk, who shall cause the same

Clerk and stenographers of municipal court — Continued

to be preserved with the other papers in the case. The said stenographer shall preserve the original minutes taken by him, which shall be filed in the office of the clerk of said court. He shall deliver to his successor in office all the minutes taken by him which shall not have been filed with said clerk, and shall act, in all matters connected with his office, in accordance with the discretion of the judges, and he shall, after he shall have filed his minutes, furnish to any one applying therefor, a transcript of said minutes, for which a charge shall be made of three cents for each folio of one hundred words contained in said transcript, to be paid into said court for the benefit of said city. It shall also be the duty of the stenographer, or clerk or deputy, to make and file in the Monroe county clerk's office all returns on appeal in cases in which the minutes of testimony are taken by said stenographer, such return to be made in type or ordinary writing, and certified by the judge who tried the cause. It shall also be the duty of such stenographer or stenographers to act as deputy clerks in the absence or inability of said clerk or when the exigencies of the business of such court requires, or upon the request of either of the judges of said court, and, when acting as such deputy clerk, he shall be clothed with the same powers as provided in and by this act for the clerk of said court and to perform such other duties pertaining to the business of said court as said judges may require. It shall also be the duty of said clerk, in the absence of both judges, to call all cases at the return day and hour and note appearances and defaults, with the same force and effect as if done by said judges or either of them, and in the absence of both judges to adjourn any action or proceeding for a period of not more than five days. Said judges, clerk, deputy clerk and stenographers, shall have power to administer

oaths and take acknowledgments the same as justices of the peace of towns. (*As amended L. 1903, Ch. 297*).

§ 253. **Fees prepaid; monthly return of moneys by clerk to treasurer**—In all actions and proceedings brought in said court, the said clerk, or deputy clerk shall demand and receive prepayment of all such fees for process, making out and filing bonds, undertakings, affidavits, together with such fees for trial, judgment and other fees as are allowed by law in justices' courts; also fees for jurors, when a jury trial is demanded from the party demanding. And, in addition thereto, such other costs, fees and disbursements as are allowed by this act. And said clerk or deputy clerk shall keep an accurate minute in such case or proceeding upon the docket of said court, and a daily itemized account of the same, and, at the end of each month, shall deposit the amount thereof with the treasurer of said city. The statement thereof to be verified by said clerk, or in his absence or inability to act, by said deputy clerk, to be a true and correct account, and that the same embraces all the moneys paid into said court during the period covered by said statement. (*As amended L. 1902, Ch. 7*).

§ 254. **Salary of judges, clerk and stenographers**—Said judges shall each be paid, in monthly payments, an annual salary of not less than three thousand dollars nor more than three thousand five hundred dollars, to be fixed by the board of estimate and apportionment, immediately after this act takes effect, and shall receive to their use no fees or other compensation for their services as judges of said court; said clerk shall be paid, in monthly payments, an annual salary of not less than twelve hundred dollars nor more than eighteen hundred dollars, and said stenographers or deputy clerks shall each be paid, in

monthly payments, an annual salary of not less than eight hundred dollars nor more than twelve hundred dollars; said salaries to be fixed by said board of estimate and apportionment. The salaries of said judges shall not thereafter be increased or diminished during the period for which they have, or either of them, has been elected or appointed. (*As amended, L.* 1903, *Ch.* 297).

§ 255. **Common council to provide rooms, stationery, etc.**—The common council shall designate the place for the holding of said court, and provide suitable rooms and furniture, and necessary blank books, blanks and stationery, for the use of said court, and shall provide for the payment of the said salaries of the said judges and the said clerk and deputy clerk. (*L.* 1880, *Ch.* 14).

§ 256. **Justice of peace abolished**—No person shall hereafter be elected to the office of justice of the peace in the said city of Rochester. (*L.* 1880, *Ch.* 14).

§ 257. **Judgment rendered within ten days; opening defaults by municipal court or county court; appeal from such orders**—In every case in which, by law, a justice of the peace is required to render judgment and enter the same in his docket within four days, the municipal court or a judge thereof is required to render judgment, and it must be entered by the clerk, in the docket of said court, within ten days after the cause shall have been submitted for final decision, anything herein to the contrary notwithstanding. Except as is herein otherwise provided, the said municipal court shall have the power to open defaults and set aside judgments rendered and entered therein, and executions issued thereon, upon such terms as may be just, in a case where the defendant shall fail to appear on the return day of process or on any

adjourned day, where it is shown that manifest injustice has been done and the defendant satisfactorily excuses his default; but no greater terms shall be imposed than the payment of the costs included in the judgment and the sum of seven dollars for opposing the motion. The application therefor shall be founded upon affidavits, and shall be made within twenty days from the entry of such judgment, but the court may hear evidence concerning the matters specified in the affidavits upon the hearing of the motion. Upon presentation of such application, the said municipal court shall issue an order, under the hand of one of the judges or said clerk, returnable in not less than five, nor more than eight days, requiring the plaintiff to show cause, if any, why said judgment should not be set aside. A copy of said order, and of the papers upon which the same is granted, shall be served upon the plaintiff, or his attorney, if he be an attorney of the supreme court, if one shall have appeared in the action not less than three days prior to the return thereof; the service upon the plaintiff to be made in one of the modes prescribed for the service of notices of appeal from justices' judgments to the county court, and upon such attorney to be in one of the modes prescribed for the service of papers in an action upon attorneys by the code of civil procedure. Pending such application and the determination thereof, the said municipal court may stay proceedings under any execution which shall have been issued. When a judgment shall be set aside, the action shall proceed as though no judgment had been rendered. In such a case where an execution has been issued and a levy made thereunder, the same may, in the discretion of the court, be allowed to stand as a security for the satisfaction of any judgment the plaintiff may finally recover. Where a transcript of a judgment of said municipal court shall have been filed in a case provided

Judgments, etc., of municipal court—Continued

for in this act, the county court of Monroe county shall have power and authority to open the default and set aside such judgment in the case above provided and all proceedings thereon, and to order a new trial in said municipal court, upon such terms as may be just. The practice in said county court upon such application shall be the same as is herein provided for like proceedings in said municipal court, except as is herein otherwise provided. The county judge or special county judge of Monroe county may, at chambers, issue the order to show cause returnable at a term of said county court, and such application may be heard and determined at said term. Upon application to the said county court, the defendant must show that, prior to the filing of such transcript, no application was made to the municipal court for like relief. The county court of Monroe county, or the county judge or special county judge, may stay proceedings under any execution issued upon said judgment pending such application. The judgment, and any execution and levy thereunder, may be allowed to stand as a security for the satisfaction of any judgment the plaintiff may finally recover, in case a new trial shall be ordered in said municipal court. This section, as amended, shall apply to any judgment heretofore or hereafter rendered in said municipal court. A fee of two dollars shall be collected by the clerk of said court from the person bringing to a hearing any such motion for the hearing thereof by the court, which shall be added to the costs of the party paying the same, if he be entitled to costs. Appeals may be taken to the county court of Monroe county, and thence to the supreme court, from orders made by the municipal court as aforesaid, the same as is now provided in cases of appeals upon the law from judgments of said municipal court. (*As amended L.* 1890, *Ch.* 561).

§ 258. **Suits upon ordinances; inhabitants or tax payers as jurors, etc., in city cases** — Suits brought to recover any penalty or forfeiture for the violation of any ordinance of the common council of the said city, shall be brought in the name of the city of Rochester, and shall be prosecuted under the direction of the city attorney, or such person as may be deputed by him or by the police justice, or such officer as the common council may direct, and may in all cases be commenced by warrant, returnable forthwith without an affidavit, showing cause therefor, or without the giving of security; no person being an inhabitant or tax payer of said city shall be disqualified for that cause from acting as a judge, justice or juror in any suit brought by or against said city in any court, nor from serving any process, or summoning a jury in any suit, proceeding or investigation, to which the city is a party. Nor shall any judge or justice of a court of sessions or other court be disqualified to hear and adjudicate on an appeal in a case of bastardy or other matter originating in said city because he is an inhabitant or tax payer thereof. (*L.* 1880, *Ch.* 141).

Inhabitants not disqualified—White Charter, § 460, this book, p. 316.

Jurisdiction in suits on ordinances—Old Charter, § 265, this book, p. 277. **penalties may be imposed by common council**—White Charter, § 23, this book, p. 35.

§ 259. **No security required by city on adjournments or appeals** In an action, suit or proceeding brought or instituted by or against the city, or executive board, or any officer of said city in any court or before any judge or justice, adjournments may be had, and appeals taken, in the same manner and with the same effect as if said city, board or officer were a natural person, except that no bond, undertaking or security shall be neces-

sary to be executed by or on behalf of the said city, board or officer. And when any appeal is taken by said city, board or officer from any judgment or order, the same shall operate and create a stay of all proceedings under the judgment or order appealed from, as though an order creating such stay had been granted by a court or judge. This section, as amended, applies to any appeal taken, or action, suit or proceeding brought or instituted at any time heretofore and undetermined when this act takes effect. (*As amended L.* 1890, *Ch.* 561).

§ 284. **Costs double for defendant in suits against officers under this act**—If a suit shall be commenced against any person elected or appointed under this act to any office, for any act done, or omitted to be done, under such election or appointment; or against any person for having done any thing or act by the command of any such officer; and if final judgment shall be rendered in such suit, whereby any such defendant shall be entitled to costs, he shall recover double costs in the manner defined by law. (*L.* 1880, *Ch.* 14).

ARTICLE XIV

DEPARTMENT OF LAW

Note—Articles XI–XIII, inclusive, omitted in White Charter as not enacted.

§ 413. **Corporation counsel and assistants**—There shall be a corporation counsel appointed by the mayor, who shall hold his office during the pleasure of the mayor appointing him, and he shall be the head of the department of law. He shall, by a certificate in writing, to be filed with the city clerk, appoint an assistant, a clerk and such other subordinates as the board of estimate and apportionment may prescribe, who shall hold their respective offices during his pleasure, and they shall discharge such duties appertaining to their offices as he may direct. (L. 1898, Ch. 182).

Powers of deputies—Public Officers Law, § 2. **Oath of office,** *id.*, § 10, **Failure to take oath** of office, Penal Code, §§ 42, 43. **Effect on official acts** of failure to take oath, Public Officers Law, § 15.

§ 414. **Salaries of corporation counsel and assistants**—The salaries of the corporation counsel, his assistant, clerk and other subordinates shall be fixed by the board of estimate and apportionment and they shall receive no fees or other compensation of any kind whatever, except that the corporation counsel may receive to his own use the costs of suits, as hereinafter provided. But all costs, allowances and disbursements in proceedings for the opening of streets, and the acquirement of land by condemnation proceedings, shall be collected and paid over to the city treasurer. (L. 1898, Ch. 182).

Costs belonging to corporation counsel—See White Charter, § 31, this book, p. 304.

White Charter

§ 415. **Bond of corporation counsel**—The corporation counsel shall execute a bond to the city, in the penalty of five thousand dollars, which, as to its form, penalty and sureties, shall be approved by the mayor. (*L.* 1898, *Ch.* 182).

Official bonds generally—Public Officers Law, §§ 11-13; **Acting without filing bond**—Penal Code, §§ 42, 43, and Public Officers Law, § 15; **Guarantors and sureties**—L. 1881, Ch. 486; L. 1893, Ch. 720, as amended L. 1895, Ch. 178.

§ 416. **Powers and duties of corporation counsel**—He shall be and act as the legal adviser of the common council and of the several officers, boards and departments of the city, and he shall appear for and protect the rights and interests of the city in all actions, suits and proceedings brought by and against it or any city officer, board or department; and such officers, boards or departments shall not employ other counsel. (*L.* 1898, *Ch.* 182).

§ 417. **Approval of contracts**—No written contract providing for the payment of two hundred dollars or more, entered into by the city or any of its officers, boards or departments shall be acted under until there shall be endorsed thereon by the corporation counsel or his assistant, a certificate to the effect that the city officer, board or department which has executed the same on behalf of the city, had authority and power to make such contract, and that such contract is in proper form and properly executed; and he shall attend to all the law business of the city, and discharge such other duties as may be prescribed in the ordinances of the common council. (*L.* 1898, *Ch.* 182).

§ 418. **Costs and allowances of corporation counsel**—He shall be entitled in actions and proceedings in which the city shall be successful to receive to his own use all costs and allowances which shall be collected from the adverse party; but he shall repay to the city treasurer all amounts disbursed in the progress of such actions

and proceedings, which were taxable as disbursements therein, and which shall have been paid by the city treasurer, whenever and as soon as such amounts are collected. (*L.* 1898, *Ch.* 182).

Costs of corporation counsel under Old Charter—L. 1880, Ch. 14, § 45, as amended L. 1897, Ch. 784. Not printed in this book.

Costs in actions or proceedings relating to taxes—L. 1903, Ch. 522. Printed in full, this book, *post*. See Index.

In the city of Rochester all costs received by the corporation counsel are turned over to the city, in consideration for which his annual salary is fixed by the board of estimate and apportionment at five thousand dollars.

§ 419. **Money collected to be paid to treasurer; inventory**—He shall pay over at once to the city treasurer all moneys collected by him for or on behalf of the city, including fines and penalties; and he shall annually, on the first Tuesday of February, file with the mayor of the city an inventory of all the books and property belonging to the city in his custody. (*L.* 1898, *Ch.* 182).

§ 420. **Compromise of claims**—He shall, whenever he considers that the best interests of the city will be subserved thereby, enter into an agreement, in writing, subject to the written approval of the board of estimate and apportionment, to compromise and settle any claim against the city, which agreement shall be reported to the common council at its next meeting, and be and constitute a valid obligation against the city; and the amount therein provided to be paid shall, with interest thereon at six per centum from its date, be included in the next city tax budget, and when raised by tax be paid to the claimant. If, however, before the adoption of the city tax budget there shall be received by the city treasurer from any source, any moneys not otherwise appropriated, the amount in the agreement provided to be paid shall be paid out of such moneys so received so far as they will satisfy the same. (*L.* 1898, *Ch.* 182).

§ 421. **Employment of counsel**—The corporation counsel, with the written consent of the mayor, may employ counsel at such compensation as may be agreed upon by the board of estimate and

apportionment, to assist him in the argument and conduct of important cases or proceedings in which the city is interested or a party. (*L.* 1898, *Ch.* 182).

§ 422. **Payment of judgments**—The amount of any judgment recovered against the city, and payable by it remaining unpaid, with the interest due thereon, in case no appeal is intended to be taken, or in case such judgment is finally affirmed on an appeal taken, shall be reported by the corporation counsel immediately after the same shall have become payable to the common council; and such amount shall be raised in the next levy of taxes for the expenses of the city, unless execution upon such judgment shall be stayed. Such judgments shall be paid out of the first moneys paid into the city treasury on account of such levy, in the order of their recovery. Until the money so raised shall be paid into the treasury and payment of judgments refused, no execution shall issue against the city, unless the amount of such judgments shall not have been included in the tax levy; provided, nevertheless, if there be any moneys in the treasury to the credit of a fund derived from the revenues of the city other than taxation not otherwise appropriated sufficient to satisfy such judgments, the common council shall direct the payment therefrom of such judgments in the order of their recovery. (*L.* 1898, *Ch.* 182).

NOTE—§§ 423–431, inclusive, omitted in White Charter as first enacted.

White Charter

ARTICLE XV

SUPERVISORS

§ 432. **Supervisors; term; powers and duties**—There shall be elected at the first election under this act, and at the city election every two years thereafter, one supervisor from each of the wards of the city who shall have been a resident in such ward for at least five months prior to such election, and who shall hold his office for two years. Such supervisors shall have the powers and be under the duties of supervisors of towns under general laws of the state so far as they are consistent with the provisions of this act; and such laws, so far as they are applicable, shall regulate such powers and duties. (*L.* 1898, *Ch.* 182).

NOTE—§§ 433–441, inclusive, omitted in White Charter as first enacted.

Term of supervisor also fixed at two years by General City Law, § 2.

Supervisors representing wards are declared to be city officers—Old Charter, § 6, this book, p. 320; **Filling vacancies in office of city supervisor**—White Charter, § 40, this book, p. 64; Old Charter, § 24, this book, p. 332; **of town supervisor**—Town Law, § 65.

Old Charter

§ 52. **Powers and compensation of supervisors**—The supervisors elected as hereinbefore provided shall have and exercise all the powers, authority and functions of supervisors of towns, except as herein otherwise provided, and shall be members of the board of supervisors of the county of Monroe, and shall be entitled to the same compensation, to be paid in the same manner. (*L.* 1880, *Ch.* 14).

ARTICLE XVI

SEALER OF WEIGHTS AND MEASURES

§ 442. **Sealer of weights and measures; term; salary; powers and duties**—There shall be a sealer of weights and measures appointed by the mayor within ten days after the beginning of every mayoralty term. He shall hold office for two years, unless sooner removed by the mayor, and he shall, within the city, have the powers and perform the duties of town sealers of weights and measures under the general laws of the state, and shall supervise the weighing of coal and perform such other duties as may be prescribed by the ordinances of the common council. His salary shall be fixed by the board of estimate and apportionment, and no fees shall be charged or collected by him or by the city for his services. If the board of estimate and apportionment in any city shall so determine, instead of a sealer of weights and measures being appointed by the mayor, there shall be appointed by the commissioner of public works as a subordinate in the department of public works, a clerk of weights and measures, who shall possess the powers and perform the duties of sealer of weights and measures as hereinbefore prescribed, and in addition thereto, shall perform such other duties in the department of public works as the commissioner thereof shall direct. (*As amended L.* 1902, *Ch.* 328).

NOTE—In the city of Rochester a clerk of weights and measures discharges the duties of sealer, under appointment of the commissioner of public works, as authorized in White Charter, § 442, *supra*.

An act to define the size of small fruit packages—L. 1899, Ch. 509.

Duties of sealer—Domestic Commerce Law, §§ 14–17.

NOTE—§§ 443–451, inclusive, omitted in White Charter as first enacted.

ARTICLE XVII

MISCELLANEOUS PROVISIONS

§ 452. **City officers shall not receive fees outside salary**—No officer of any city government, except corporation counsel, city marshal, commissioners of deeds and city officers acting as commissioners of deeds, shall have or receive to his use any perquisites, compensation or fees for services pertaining directly or indirectly, or which may hereafter be added to the duties of his office, in addition to his salary. The compensation of all the officers, clerks and subordinates in the several departments shall not exceed in the aggregate the appropriation made by the board of estimate and apportionment for the purpose. (*L.* 1898, *Ch.* 182).

Taking unlawful fees for services not rendered a misdemeanor—Penal Code, §§ 49, 50.

§ 453. **Additional allowances shall not be made**—No additional allowance, beyond the legal claim which exists under any contract with the corporation, or for any services on its account or in its employment, shall be made. (*L.* 1898, *Ch.* 182).

§ 454. **City debtors not to have contracts**—No bid shall be accepted from, or contract awarded to any person who is then as principal or surety in default to the city upon debt, contract or obligation. (*L.* 1898, *Ch.* 182).

§ 455. **City officers shall not be interested in public contracts**—No member of the common council, or other city officer, shall be interested directly or indirectly, in any contract in which the city is a party, either as principal or surety in such contract; nor

shall any member of the common council, city officer, or salaried employee thereof, or his partner, or any agent, servant or employee of such member, or officer, or of the firm of which he is a partner, purchase from or sell to the city, or any officer thereof, any real or personal property for the use of the city, or any board or officer thereof, or be interested, directly or indirectly, in any work to be performed for, or services rendered to or for it, or in any sale to or from said city, or to its officers, or any person in its behalf; and any contract made in violation of any of these provisions shall be void. No officer or employee of the city shall be eligible to or hold the office of inspector of elections, poll-clerk or ballot-clerk; but the fact that a person is a commissioner of deeds shall not disqualify him from holding such office. (*L.* 1898, *Ch.* 182).

City officers shall not be interested in public contracts—General City Law, § 3; a misdemeanor, Penal Code, § 473; such contracts void as against public policy—Dillon's Municipal Corporations, § 444.

See Old Charter, § 39, this book, p. 45, and notes thereunder.
See also Index on "Misdemeanors."

§ 456. **Bonds may be required of any officer**—In addition to the officers required by this act to give bonds, the common council may require any other officer or person who is or may be appointed under the provisions of this act to give like bonds with such sureties as it may approve, and conditioned as it may direct; and it may, whenever it may be proper, require additional or further security of any officer or person after the giving of the bond first required. (*L.* 1898, *Ch.* 182).

See Old Charter, § 40, subdiv. 25, this book, p. 53.

Official bonds generally—Public Officers Law, §§ 11–13; Failure to file, Penal Code, §§ 42–43; Public Officers Law, § 15; Guarantors and Sureties, L. 1881, Ch. 486; L. 1893, Ch. 720, as amended L. 1895, Ch. 178.

§ 457. **Bonds required must be given**—Except as otherwise provided by law no person elected or appointed to any office under the provisions of this act shall enter upon the discharge of his duties until the bond, if any, required to be given by him shall have been approved. (*L.* 1898, *Ch.* 182).

See note as to official bonds, White Charter, § 456, this book, p. 310.

§ 458. **Officials cannot hold two offices**—No person shall, at the same time, hold more than one of the offices created or authorized by this act, but this provision does not apply to the offices of notary public and commissioner of deeds. (*L.* 1898, *Ch.* 182).

Member of legislature not eligible for city offfce and city officers not eligible to legislature—State Constitution, Art. III, §§ 7 and 8.

§ 459. **Unauthorized persons cannot contract debts**—No person shall have power to make any purchase or contract any debt on the part of the city, unless especially authorized by the provisions of this act. (*L.* 1898, *Ch.* 182).

Persons dealing with agents of city have no right to assume that they are acting within the line of their duty but must take care to learn the nature and extent of their authority—McDonald vs. Mayor, 68 N. Y. 23.

§ 460. **Taxpayer not disqualified to act as judge, witness or juror**—Upon the trial of any issue, or upon the taking or making of any inquisition, appraisal or award, or upon the judicial investigation of any facts whatever, to which issue, inquest or investigation the city is a party, or in which the city may in any way be interested, no person shall be deemed an incompetent judge, referee, commissioner, witness or juror by reason of his being an inhabitant, freeholder or taxpayer of the city. (*L.* 1898, *Ch.* 182).

See Old Charter, § 258, this book, p. 301.

§ 461. **Actions for damages to person or property**--No civil action shall be maintained against the city for damages or injuries to person or property sustained in consequence of any street, highway, bridge, culvert, sidewalk or crosswalk being defective, out of repair, unsafe, dangerous or obstructed unless it appear that written notice of the defective, unsafe, dangerous or obstructed condition of such street, highway, bridge, culvert, sidewalk or crosswalk was actually given to the commissioner of public works, and that there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of, or, in the absence of such notice, unless it appears that such defective, unsafe, dangerous or obstructed condition existed for so long a period that the same should have been discovered and remedied in the exercise of reasonable care and diligence. But no such action shall be maintained for damages or injuries to the person sustained in consequence of the existence of snow or ice upon any sidewalk, crosswalk or street, unless written notice thereof relating to the particular place, was actually given to the commissioner of public works and there was a failure or neglect to cause such snow or ice to be removed, or the place otherwise made reasonably safe within a reasonable time after the receipt of such notice. All claims against the city for damages or injuries to person or property alleged to have been caused by the misfeasance or negligence of the city, or any of its officers or employees, shall be presented to the common council, in writing, within three months after the happening of the accident or injury out of which the claims arose. Such writing shall describe the time when, the particular place where and the circumstances under which the damages or injuries were sustained and the cause thereof; it shall also state, so far as is then practicable, the nature and extent of the damage or injuries; it shall also state the

place of residence of the claimant by street and number, and, if there be no street or number, it shall contain such statement as will disclose the place of residence; and all such claims shall be verified by the oath of the claimants. The omission to present such claim within three months, or to commence an action thereon within one year, shall be a bar to any claim or action therefor against the city; but no action shall be brought upon any such claim until three months have elapsed after the presentation of the claim to the common council. Nothing contained in this section shall be held to repeal or modify any existing requirement or statute of limitations which is applicable to this class of actions, but on the contrary shall be held to be an additional requirement to the right to maintain such action; nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence, nor to impose upon the city any greater duty or obligation than that it shall keep its streets and public places in a reasonably safe condition for public use and travel. The place of trial of all actions or proceedings against the city, or any of its officers, boards or departments, shall be the county in which the city is situated. (*As amended L. 1899, Ch. 581*).

MEMORANDUM ON ACTIONS INVOLVING CITY OR CITY OFFICERS

Taxpayers' actions against city officers—Code Civil Proc., §§ 1925-1931. See also L. 1881, Ch. 531, as amended L. 1887, Ch. 673, L. 1892, Ch. 341, and numerous cases cited thereon, Cumming and Gilbert's General Laws, Vol. II, p. 2486. **In taxpayers' actions costs should not be awarded against public officers** unless they have acted with gross negligence, in bad faith, or with malice—O'Connor vs. Walsh as Mayor, 83 App. Div. 179. **Legal expenses of city officers** when successful in actions, may be paid by the city—L. 1875, Ch. 700. **Illegal employment by the city of any person** may be restrained by taxpayers' action—Peck vs. Belknap, 130 N. Y. 394.

Service of summons against city—Code Civil Proc., § 431.

Presentation of false claims a felony—Penal Code, § 672.

False audit and payment of claims a felony—Penal Code, §§ 105, 106.

NOTE—Memorandum continued on next page, 314.

Memorandum on Actions Involving City or City Officers—Continued

Presentation of claims to chief fiscal officer necessary for costs—Code Civil Proc., § 3245. This section applies only to actions on contract and not to actions in tort—Gage vs. Village of Hornellsville, 106 N. Y. 667; Hunt vs. City of Oswego, 107 N. Y. 629.

Costs in actions brought in name of people for benefit of city—Code Civil Proc., § 3243.

Cause of action against city arising from derogation of grant or covenant not barred by statute of limitations—L. 1901, Ch. 659.

Act to facilitate the collection of judgments against city—L. 1880, Ch. 554.

Accident caused by presence of snow and ice upon a street is not sufficient to make city liable unless in addition thereto some negligence is shown—Crawford vs. City of New York, 68 App. Div. 107.

Where city has assumed the duty of removing ashes and other rubbish which accumulates an arbitrary distinction in favor of some inhabitants and against others, will not be tolerated. But where the force is insufficient to remove everything, ashes may be removed from private residences and not from department stores, and the removal of trade waste is not mandatory in any event—People ex rel. Adams Dry Goods Co., vs. Woodbury, as Comr., etc., 88 App. Div. 443.

That portion of the labor law requiring contractors with municipalities to pay the prevailing rate of wages held to be unconstitutional—People ex rel. Rodgers vs. Coler, 166 N. Y. 1. This law also held unconstitutional so far as it requires municipalities to pay their employees the prevailing rate of wages—Ryan vs. City of New York, 78 App. Div. 134, affirmed by Court of Appeals, Jan. 29, 1904. Contract entered into by city held not to be invalid because it contains provisions of the labor law which have been declared void by the courts—Knowles vs. City of New York, 176 N. Y. 430.

Public officers having the custody of public moneys are insurers of the same and are liable for a loss thereof, although such loss occurred without fault or negligence on their part—Tillinghast vs. Merrill, 151 N. Y. 137.

Person acting as a gratuitous agent of the public is not liable for the negligence of a person employed by him—Donovan vs. McAlpin, 85 N. Y. 185.

The law limiting the hours of labor does not apply to members of the fire department—People ex rel. Sweeney vs. Sturgis, 78 App. Div. 460.

The doctrine of laches should not be so strictly applied in the case of a municipal corporation as in the case of an individual—Stemmler vs. Mayor, 45 App. Div. 573.

Public powers or trusts devolved by law upon the governing body of a municipal corporation, to be exercised by it when, and in such manner as it shall judge best, cannot be delegated by such body to others—Birdsall vs. Clark, 73 N. Y. 73.

Memorandum on Actions Involving City or City Officers—Continued

The corporation counsel of a city must obey a resolution of the legislative body in regard to the commencement or discontinuance of litigation—People vs. Lowber, 7 Abb. Pr. 158.

Mandamus proceeding instituted to secure reinstatement abates upon respondent ceasing to be a public official—People ex rel. Hatch vs. Lantry, as Comr., etc., 88 App. Div. 583.

Police justice of Rochester has jurisdiction to render judgments in non-support proceedings under Old Charter, § 203 (this book, p. 273)—People vs. Steinholtz, Monroe County Court, opinion of Sutherland, J., filed Jan. 27, 1904.

Position of school principal not within classified civil service and veterans not protected against summary removal—In re Pierce vs. Board of Education of Rochester, 84 N. Y. Supp. 1141; affirmed, Court of Appeals Jan. 26, 1904.

Public moneys to denominational schools—An institution incorporated under "An act for the incorporation of benevolent, charitable, scientific and missionary societies," (L. 1848, Ch. 319), and which furnishes to orphan boys moral and religious education is not a school or institution of learning within the meaning of state constitution, Art. IX, § 4, which prohibits the payment of public moneys to any denominational school; under Consolidated School Law, § 32, (L. 1894, Ch. 556) the board of education may employ members of Catholic sisterhood to teach in such asylum—Sargent vs. Board of Education of the City of Rochester, 35 Misc. 321; same title, 76 App. Div. 588; affirmed by Court of Appeals, January 29, 1904.

Liability for dangerous areaway—Donnelly vs. City of Rochester, 42 App. Div. 624; reversed 166 N. Y. 315.

Judgment against city in the absence of fraud or collusion binds the citizens and taxpayers—Ashton vs. City of Rochester, 133 N. Y. 187.

A cause of action accrues the instant some person has a legal right to bring the action—Patterson vs. Patterson, 59 N. Y. 574; Wetmore vs. City of Rochester, 77 Hun 33, affirmed upon other ground, 140 N. Y. 578; Davidson vs. Budlong, 40 Hun 245; Barnes vs. City of Brooklyn, 22 App. Div. 520.

Recision of city contracts; mistakes; evidence; meeting of minds—Moffet, Hodgkins and Clarke Co. vs. City of Rochester. This was action for writ of injunction restraining the city from declaring the complainants in default with respect to a proposal made for construction of a new water supply for Rochester, and also declaring complainants $90,000 bond forfeited, and from attempting to enforce the collection of said bond. Decree granted on opinion of Coxe, J., U. S. Circuit Court, N. D., Aug. 18, 1897 (82 Fed. Rep. 255); reversed, U. S. Circuit Court of Appeals (33 C. C. A. 319); C. C. A. reversed and C. C. affirmed by the U. S. Supreme Court, on opinion of Mr. Justice McKenna, May 31, 1900 (178 U. S. Rep. 373).

City bound to furnish employee a reasonably safe place to work—Wannamaker vs. City of Rochester, 44 St. Rep. 45; affirmed 137 N. Y. 529.

Memorandum on Actions Involving City or City Officers—Continued

Power of city to compel railroad to carry street over its tracks—R. & H. V. R. R. Co. vs. City of Rochester, 17 App. Div. 257; modified 163 N. Y. 608.

When award of damages for diverting water not excessive—Matter of City of Rochester, 57 App. Div. 634. **Opinion of witness as to damages occasioned by diversion of water**—Matter of City of Rochester, 49 Hun 588.

Liability of city for unsafe bridges owned by state—Schomer vs. City of Rochester, 15 Abb. N. C. 57.

No obligation rests upon owners of lots in a city to repair a street or sidewalk in front of their lots in the absence of a statutory obligation imposed by the state or the municipality—City of Rochester vs. Campbell, 123 N. Y. 405.

Where city is held liable for injury caused by contractor obstructing street, it may recover the damages from the contractor—City of Rochester vs. Montgomery, 72 N. Y. 65.

Tenant who goes into possession of premises with knowledge of an existing nuisance cannot recover damages against city—Voos vs. Rochester, 92 Hun 481; affirmed on opinion below, 159 N. Y. 541.

When recommendation of committee of common council to award contract afterwards reconsidered, no further action on the part of the committee is enforcible by mandamus—Ryan vs. Aldridge, 83 Hun 270.

Municipal ordinance requiring filling in of quarry limited to cases affecting public health—City of Rochester vs. Simpson, 57 Hun 36; reversed 134 N.Y. 414, holding that **under § 276, Old Charter,** city had power to pass ordinances requiring excavations to be filled up and drained.

Ordinance regulating speed of horse cars not repealed by passing ordinance permitting change of motive power—Martineau vs. Roch. Ry. Co., 81 Hun 263.

Power of city to regulate bill posting—City of Rochester vs. West, 164 N. Y. 510.

Singing by members of Salvation Army does not constitute a nuisance nor violate an ordinance forbidding noise in streets—People ex rel. Cartmill vs. City of Rochester, 44 Hun 166.

Surgeon of the police department not a public officer of the city—Cain vs. Warner, 45 App. Div. 450; **police telegraph operator not a public officer**—Miller vs. Warner, 42 App. Div. 208.

Question of trespass by city is for jury to decide—Roth vs. City of Rochester, 96 Hun 606.

City officers and employees have a perfect remedy at law for salaries—People ex rel. Carnahan vs. Edgerton et al. Opinion filed by Nash, J., Apr. 7, 1900, not reported. See other cases as to salaries cited, this book, p. 86.

City cannot compel telephone wires to be placed in conduits containing wires carrying dangerous currents—City of Rochester vs. Bell Telephone Co., 52 App. Div. 6; on trial, opinion filed by Hancock, referee, Apr. 2, 1902. **Conduits in streets** do not constitute an additional burden upon abutting owners—Castle vs. Bell Telephone Co., 49 App. Div. 437.

Courts are unwilling to investigate reasons for granting of franchise by common council on charge of corrupt motives—Barhite vs. Home Telephone Co., 50 App. Div. 25. **As to granting franchises under White Charter**—See § 19, this book, p. 30.

§ 218. **Dangerous and obstructed sidewalks and streets**—In all cases it shall be the duty of the owner of every lot or parcel of land in said city to keep the sidewalks adjoining his lot or piece of land in said city in good repair, and to remove and clean away all snow and ice and other obstruction from such sidewalk. The city of Rochester shall not be liable for any injury caused by such sidewalk or any roadway being out of repair, or dangerous from snow or ice, or unlawfully obstructed, unless actual notice of the unsafe or dangerous condition thereof has been given to the city officers, having charge of the highways, a reasonable time before the happening of any such injury. Any person or persons who shall claim damages against said city for injury caused by any alleged negligence shall not be allowed to tax costs against said city in any action brought therefor, unless the party so claiming damages shall have, within fifteen days after the happening of such injury, notified the mayor or corporation counsel in writing, of the time and location of the place where such injury occurred and the particulars thereof. The executive board shall have the power to cause to be repaired any sidewalk where the owner of the property shall neglect or refuse to repair the same for five days after a written notice so to do has been served on him, either personally or by leaving the same at his residence or place of business, if he live in the city with some person of suitable age and discretion, or, if the owner be a non-resident, by posting said notice on the premises in front of which such repairs are required to be made, and by mailing a copy of the same to his post-office address, if it can be ascertained by reasonable diligence. The said executive board shall also have power to cause to be cleaned any sidewalk from snow, ice or other obstruction, where the same have remained for twelve hours. The city of Rochester shall have a cause of action against any such owner, to collect the expense of any work or

repairs, as aforesaid, and a judgment in such action shall be a lien upon the real estate of the person or persons against whom the same may be recovered. A bill or statement of the amount of such expenses shall be sent by mail to such owner, if his address be known. If such expense is not paid, an affidavit of the actual cost thereof and date of completion thereof, and the property in front of which the work or repairs were done, shall be filed with the assessors of the city at or before the time of making the general city tax levy by the common council hereinbefore mentioned, and they shall add the amount thereof, with interest at the rate of fifteen per centum per annum, from the time of the date of completion of such work, to the amount assessed against such land for the next general city tax, and the whole amount of such assessment or expense shall be collected as is provided in reference to general city taxes. (*Amended L.* 1881, *Ch.* 343; *L.* 1890, *Ch.* 561; *L.* 1897, *Ch.* 784).

§ 462. **Annual reports of heads of departments**—The several heads of departments shall present to the mayor, annually, on or before the first Monday of November, a report of their proceedings during the preceding year, and he shall transmit the same to the common council with any recommendations he may think proper to make. But nothing in this section contained shall be so construed as to relieve such heads of departments from furnishing information required by the mayor at any other time. (*L.* 1898, *Ch.* 182).

§ 463. **Charges and trials against city officers**—Charges against any city officer may be of disability for service, in which case the examination shall be one of inquiry, and the decision may be for honorable discharge from service; or of neglect, or violation of law or duty, inefficiency, intemperance, disobedience of orders, or unbecom-

ing official or personal conduct, in which case the examination shall be a trial, and the offender may be punished as in this act provided. (*L.* 1898, *Ch.* 182).

§ 464. **Witnesses not excused from testifying** No witness shall be excused from testifying in any criminal proceeding or in any investigation or inquiry before the common council or any committee thereof, or before any officer of the city having the right to conduct the investigation, touching his knowledge of any offense committed against the provisions of this act or any of the ordinances of the city; but such testimony shall not be used against him in any criminal prosecution whatever. (*L.* 1898, *Ch.* 182).

Investigations by mayor, common council or committees Old Charter, §§ 282–283, this book, p. 69.

§ 465. **Proceedings when contractors fail on public work** No assessment that may hereafter be levied shall be void or shall be vacated by any court because of a failure on the part of the contractor to comply in the execution of the work with all the requirements of law or the contract in respect thereto; provided that if any taxpayer or any owner of property liable to be assessed therefor shall make an affidavit during the progress of any work to the effect that such work is not done or not being done according to law or the contract, specifying in what respects it does not comply therewith, and shall file such affidavit with the commissioner of public works and deliver a copy thereof to the contractor, his agent or either of the sureties on his bond, and shall, within twenty days after the confirmation of the assessment, take the proceedings mentioned in the next section, the court may stay the payment to the contractor of any money under his contract; and if it shall appear on the hearing in such proceeding that the defects stated in such affidavit exist, the court shall order that the amount assessed shall not be paid to the contractor and shall not be forced by the city until such work shall be done in accordance with law and the contract therefor, and no interest shall be charged upon

the assessment during the time that the payment thereof shall be stayed, provided that the court shall finally decide that the defects charged existed and were of a substantial nature. Whenever it shall in any way appear to the court that manifest injustice or damage has been done to the city or any person or property assessed by reason of a failure to comply with the contract relating to any work, the court may, if it be before sale and before the contractor shall have been paid the sum provided by his contract to be paid to him, reduce the amount of the assessment or allowance in such amount as will enable the owner or the city, as the case may be, to have the work done in accordance with the contract; and if after sale or after the contractor shall have been paid, the court shall grant judgment for the damages against the contractor and his sureties as hereinafter provided, the contractor and the sureties on his bond and their legal representatives, or such of them as can be served with process or notice, shall be made parties to any proceeding for that purpose, and shall be therein adjudged to be liable to the party injured or the city, as the case may be, for the amount in which any assessment or allowance shall be reduced, if it appears that the contractor was in fault in the premises. If the city was in fault it shall be adjudged to be liable to the party injured for such amount. (*L.* 1898, *Ch.* 182).

§ 466. **Hearing on application to vacate or reduce assessments for local improvements**—If, in the proceedings relative to any assessment or assessments for local improvements in the city, or in the proceedings to collect the same, any fraud or defect in the work, or substantial error, shall be alleged to exist or have been committed, the party aggrieved thereby may, within twenty days after the completion of the assessment, apply to have the assessment vacated or reduced, to a judge of the supreme court, at special term or at chambers, or to the county judge, who shall thereupon, upon due notice to the corporation counsel, and to the contractor and his

sureties, or any other person, if they, or either of them, be proper parties, proceed forthwith to hear the proofs and allegations of the parties. (*L.* 1898, *Ch.* 182).

Provisions of Old Charter as to local improvements, this book, pp. 249-254.

§ 467. **Vacating or reducing assessments for local improvements.**—If after such hearing it shall be finally decided that the alleged fraud or defect in the work, or substantial error, exists or has been committed, the assessment shall be vacated except as herein otherwise provided, and the lien created thereby or by any subsequent proceeding shall, except as herein otherwise provided, cease; and no suit or action in the nature of a bill in equity or otherwise shall be commenced to vacate any assessment in the city or to remove a cloud upon title arising from any assessment hereinafter made. In case the assessment shall not be vacated, the assessment may be reduced or judgment may be given as herein provided. Owners of property shall, in proceedings to reduce or vacate or stay payment of assessments, be confined to the form of proceeding in this article mentioned. The court may, in a proper case in proceedings under this article, direct that any issue or issues of fact be tried before a jury. (*L.* 1898, *Ch.* 182).

NOTE—"An act to authorize the recovery of an assessment paid for a local improvement, which assessment has been annulled" (L. 1876, Ch. 310), provides as follows:

"Whenever an assessment for a local improvement has been annulled by the judgment or order of any court any sum of money which has been heretofore, or shall be hereafter paid thereon, may be refunded, with interest, from the time of such payment. If not so refunded within one year, from the time of such judgment or order annulling such assessment, an action may be maintained to recover such sum, with interest thereon."

Statute does not contemplate vacating entire assessment in one proceeding Wallace vs. Mayor, 53 App. Div. 182; affirmed, 165 N. Y. 632.

Statute should be brought to attention of trial court Parsons vs. City of Syracuse, 67 App. Div. 207.

Improper exemption of lands within prescribed territory (Case of Main street bridge case), Joslyn vs. City of Rochester, opinion by Nash, J., equity; affirmed, 66 App. Div. 622.

§ 468. **Assessment not void unless objections have been filed**—It is further provided that no assessment that may be hereafter made shall be void or shall be vacated; nor the sale of property therefor be declared illegal, or the deed or certificate of conveyance therefor be adjudged invalid or illegal, or any moneys paid on account of or because of such assessment be recovered back or refunded because of any error, illegality or irregularity in any of the proceedings in relation to the work or improvement for which such assessment was made prior to the commencement of the work, including the letting of the contract for the work, unless the party objecting thereto shall have filed his objection or objections with the board of estimate and apportionment within ten days after the letting of the contract for said work, stating the error, illegality or irregularity complained of, together with his address; the board shall thereupon give the person or persons filing such objection or objections, together with the contractor to whom the contract to do the work was let, and the commissioner of public works a hearing, and the decision of the board shall be final and conclusive, unless within ten days after such decision, the party or parties filing such objection or the contractor or the city shall commence proceedings to review the same; and in the event that the proceedings, or any of them, including the letting of the contract, be adjudged illegal, the contract for doing the work shall be and become null and void and in no respect binding upon the city. (*L.* 1898, *Ch.* 182).

§ 469. **Amount of reduction by court; new assessment**—When proceedings are taken because the work has not been done according to law, or the assessment is reduced because the work has not been done according to law, or contract, and a certificate of indebtedness for such work or any part thereof shall have been issued, or payments for such work or any part thereof shall have been made, and no objection shall have been filed prior to the issuing of

such certificate or payment, the court shall not reduce the assessment below the amount of the certificate issued or payments made and the interest due thereon. Whenever an assessment for any public work or improvement, hereafter made, shall be vacated or set aside under the provisions of this article, the assessors shall forthwith proceed to make a new apportionment and assessment for the same, with interest thereon, or for such amount as the court shall by its judgment direct. (*L.* 1898, *Ch.* 182).

§ 470. **Appeals from decisions as to assessments**—Either party may appeal from the final decision of the court, or a judge thereof, upon any proceedings taken under this article, the same as from an order in a civil action. Such appeal must be taken within ten days after the service upon such party of notice of such final decision. (*L.* 1898, *Ch.* 182).

§ 471. **Consolidation of actions as to assessments**—Two or more persons may unite in commencing and prosecuting proceedings under this article; and when two or more persons have commenced separate proceedings under this article to vacate or reduce assessments for the same public work or improvement, the court or the judge before whom the same are commenced or pending, or where some are commenced before the county judge, and some in the supreme court, a judge of the supreme court at special term or chambers may consolidate such separate proceedings into one proceeding. (*L.* 1898, *Ch.* 182).

§ 472. **Taxpayers may have city publications**—Upon payment of ten dollars a year to the treasurer, any taxpayer of the city may have one copy of the following publications, which shall be delivered to him by a city marshal immediately after they are respectively printed, at any place within the city designated by him, within one-quarter of a mile from the place where the common council shall

hold its meetings: The printed minutes of the meetings of the common council, of the board of estimate and apportionment, and of the board of contract and supply, as they from time to time appear, and the bound and indexed volume of each at the end of each year and claims against the city presented by the comptroller as they from time to time appear in their printed form, and the comptroller's annual published statement of the financial condition of the city. (*L.* 1898, *Ch.* 182).

§ 473. **Construction of words**—The word "his" as used in this act shall, in all proper cases, be held to include and be co-extensive with the words "her" "it" and "their;" the word "person," shall be held to include and to be co-extensive with the words "persons," "company," "joint stock association" and "corporation;" the word "street" shall be held to include and be co-extensive with "roads," "avenues," "highways," "alleys" and "squares;" the word "work" shall be held to include and be co-extensive with "improvements" and "repairs;" the word "materials" shall be held to include and be co-extensive with "supplies," "stationery," "books," "furniture" and "repairs to furniture;" the word "tax" shall in all proper cases be held to include and be co-extensive with "water rents or rates," "assessments or re-assessments for local improvements," and the singular noun shall be held to include and be co-extensive with the plural noun. (*Added by L.* 1899, *Ch.* 581).

Construction of words in Old Charter—See this book, p. 336.

NOTE—§§ 473–481, inclusive, omitted in White Charter as first enacted.

§ 482. **White Charter repeals inconsistent laws and ordinances**—All statutes of the state and ordinances of the city so far as inconsistent with the provisions of this act are hereby repealed, but such repeal shall not affect any right already existing or accrued, or any liability incurred by reason of any violation of any law heretofore existing, or any suit or proceeding already instituted, or action had under the laws or ordinances, unless otherwise expressly provided in

this act. But nothing herein contained shall be construed so as to affect any of the several acts or parts of acts to regulate and improve the civil service of the state of New York. (*L.* 1898, 182).

White Charter a legislative enactment and cannot be overturned by rules of civil service commission—People ex rel. Skelly vs. Grant, opinion by Nash, J.; affirmed, 52 App. Div. 635.

Proceedings of civil service commission cannot be enquired into collaterally—People ex rel. Barnett vs. Johnston, 38 Misc. 645; affirmed without opinion, 75 App. Div. 636.

Repealing clause of Old Charter—See this book, p. 336.

§ 483. **Saving clause; statutes not inconsistent shall remain in force and shall be construed in harmony with White Charter; existing powers transferred; park commission continued**—Nothing contained in this act shall be construed to repeal any statute of the state or ordinance of the city or rule or regulation of the board of health not inconsistent with the provisions of this act and the same shall remain in full force and effect, when not inconsistent with the provisions of this act, to be construed and operated in harmony with the provisions of this act. The powers which are conferred and the duties which are imposed upon any officer or department of the city under any statute of the state, or any city ordinance which is in force at the time of the taking effect of this act, shall, if such office or department be abolished by this act, be thereafter exercised and discharged by the officer, board or department upon whom is imposed corresponding or like functions, powers and duties under the provisions of this act. Where any contract has been entered into by the city prior to the time of the taking effect of this act, or any bond or undertaking has been given to or in favor of the city, which contains provisions that the same may be enforced by some officer, board or department therein named, but by the provisions of this act such office, board or department is abolished, such contracts, bonds and undertakings shall not in any manner be impaired, but shall continue in full force and the powers conferred and

White Charter

the duties imposed with reference to the same upon the officer, board or department which has been abolished, shall thereafter be exercised and discharged by the officer, board or department upon whom is conferred or imposed like powers, functions or duties under the provisions of this act. The park commission, in any city, which at the time this act takes effect, has a general park system which has not been completed by the purchase of lands according to plans heretofore prepared and adopted, is continued in office, notwithstanding the provisions of this act, with all the powers and subject to all the duties, conferred and imposed upon such commission by the law creating such commission and the amendments thereto. (*As amended L.* 1903, *Ch.* 311).

NOTE—§§ 484–494, inclusive, omitted in White Charter as first enacted.

§ 495. **When White Charter in force.**—Except as otherwise provided, so much of this act as pertains to the election of officers and to the provisions of section thirty-one, shall take effect September first, eighteen hundred and ninety-nine: sections ninety-nine and four hundred and eighty-four shall take effect immediately and the remainder of the act shall take effect January first, nineteen hundred. (*As amended L.* 1899, *Ch.* 581).

Old Charter

NOTE—**Miscellaneous provisions of the Old Charter, not published elsewhere in this book, are as follows:**

§ 6. **Officers elected and appointed**—The officers of said city shall be one mayor, one treasurer, three members of the executive board, two judges of the municipal court, one police justice, one supervisor for each ward, one alderman for each ward, one constable for each ward, and one commissioner of common schools for each ward; all to be elected by the electors of the city, by ballot, as hereinafter provided; one city clerk, one auditor, one city attorney, one overseer of the poor, three assess-

ors, one sealer of weights and measures, one city surveyor, two police commissioners and one police clerk, to be appointed as hereinafter provided, and such other officers as are, by this charter or other law, to be elected or appointed. (*As amended L.* 1892, *Ch.* 109).

See note after Old Charter, § 24, this book, p. 332.

Note—§ 7, Old Charter, not printed herein (as amended L. 1897, Ch. 784), covered the election of mayor, police justice, treasurer, supervisors, constables, aldermen, members of the board of education, and the appointment, powers and duties of auditor; § 8, Old Charter, not printed herein (as amended L. 1888, Ch. 86), covered the appointment of city clerk, city surveyor, overseer of the poor, city attorney, commissioners of Mt. Hope cemetery, assessors, sealer of weights and measures, fire marshal, and pound masters.

§ 11. **Removal of city treasurer and officers appointed by common council**—The city treasurer or any person whose appointment is herein conferred upon the common council, may each be removed from office by the common council, for official misconduct, or for neglect or unfaithful performance of the duties of his office; but notice of the charges, and an opportunity of being heard in defense, shall first be given. (*As amended L.* 1890, *Ch.* 561).

Memorandum on Elections

For full information in regard to primaries and elections, see "Jewett's Manual for Election Officers and Voters," which contains all the general provisions of law now in force and the decisions on these subjects.

The Election Law—Prior to 1890, the Revised Statutes (Part I, Ch. 6), contained the general provisions of law relating to elections. In 1890 the legislature adopted the system of voting by official ballot (L. 1890, Ch. 262), and required personal registration in cities (L. 1890, Ch. 321). The statutory revision commission reported as chapter six of the general laws, "The Election Law," which was passed in 1892 (L. 1892, Ch. 680). After being amended variously the law was revised and re-enacted in 1896 (L. 1896, Ch. 909). Provisions in regard to primary elections were contained in the election laws of 1892 and 1896, *supra*, but in 1898 the legislature enacted the Primary Election Law (L. 1898, Ch. 179), which law was re-enacted entirely the following year (L. 1899, Ch. 473).

Note—Memorandum continued on next page, 328.

Memorandum on Elections—Continued

The provisions of the State Constitution concerning elections and elective officers are found in Art. II, §§ 1–6; Art. III, §§ 1–9, 18, 27, and 28; Art. IV, §§ 1–3, 7; Art. V, §§ 1–2, 7; Art. VI, §§ 1, 2, 4, 7, 8, 10–18, 22; Art. VII, § 4; Art. X, §§ 1–8; Art. XII, § 3; Art. XIII, §§ 1–4, 6; Art. XIV, §§ 1–3.

The provisions of the Penal Code relating to crimes against the elective franchise are found in §§ 41–41zz, inclusive.

Who are citizens—U. S. R. S., 2d edition, §§ 1992–1998, title 25; § 2168, title 30.

Naturalization—U. S. R. S., 2d edition, §§ 2165–2167, 2169–2170, 2172, 2174, title 30; **False certificates**—Penal Code, §§ 41x, 41y; **State Naturalization Law**—L. 1895, Ch. 927.

Soldiers and Sailors Election Law—L. 1898, Ch. 674,

Metropolitan Election Districts Law—L. 1898, Ch. 676.

Town Enrollment Act—L. 1902, Ch. 195.

Town meetings, election and tenure of town officers—Town Law: See also L. 1897, Ch. 551; L. 1898, Ch. 594; L. 1901, Ch. 34; L. 1901, Ch. 174; L. 1902, Ch. 10; L. 1902, Ch. 239; L. 1903, Ch. 266.

Village officers and elections—Village Law.

School elections—Consolidated School Law.

Old Charter

The provisions of the Old Charter as to elections are printed herein as they exist. Since 1875 the Constitution of the State of New York has prohibited the legislature from passing local bills regulating "the opening and conducting of elections or designating places of voting," but charter provisions existing before the constitutional prohibition may be amended afterwards—People ex rel. Lardner vs. Carson, 10 Misc. 237; affirmed, 155 N. Y. 491.

NOTE—The special act entitled, "An act to provide for elections, the fiscal year, the reports of officers and departments, and the auditing of accounts in the city of Rochester." (L. 1895, Ch. 604), not printed in this book, affected Old Charter, §§ 7, 8, 13, 14, 18, 21, 23, 25, 34 and 46. The sections relating to elections, together with other charter provisions, were later covered by "An act to amend the charter of the city of Rochester." (L. 1897, Ch. 784).

§ 13. **Time of opening and closing polls**—On the day of any election held by virtue of this act, the polls shall be opened in each ward and election district in said city at the several places designated by the common council, at six o'clock in the forenoon, and shall be kept open without intermission or adjournment, until five o'clock in the afternoon, at which time they shall be finally closed. (*As amended L. 1897, Ch. 784.*).

Time of opening and closing polls—Election Law, § 3.

When the election of city officers shall be held—State Constitution, Art. XII, § 3.

§ 14. **The Election Law shall govern**—The number of inspectors, poll clerks and ballot clerks, their appointment, their powers and duties, their compensation, and the filling of any vacancies that may occur, the conduct of primaries, conventions and nominations, the qualification and registration of voters, the preparation of official ballots, sample ballots and instruction cards, ballot boxes and other supplies, the distribution thereof to polling places, and the conduct of elections in said city for municipal officers, shall be the same as prescribed by the act in relation to elections constituting chapter six of the general laws, and being chapter nine hundred and nine of the laws of eighteen hundred and ninety-six, and the amendments thereto, which are hereby made a part of this act, and shall govern elections in said city, unless said city shall determine to use any other lawful method of voting, in which case the statutes regulating such methods of election shall govern, and except as may be otherwise expressly provided herein. *(As amended L. 1897, Ch. 784).*

Adoption of voting machines—Election Law, § 163.

Inspectors' powers to appoint poll clerks in 1892—Howe vs. City of Rochester, 86 Hun 3.

§ 15. **Commencement of terms of office**—All officers elected by the people, according to the provisions of this charter, shall enter upon their respective offices on the first day of January, next following such election, unless otherwise by law provided. *(As amended L. 1897, Ch. 784).*

Commencement of term of office—Public Officers Law, § 4.

§ 16. **Terms of office and salaries**—The period of a year, as applied in this charter to the terms of office and the salaries thereof, shall extend from and including the first day of January in one year to and including the thirty-first day of December in the same year, in cases where the term of office commences on the first day of January. (*As amended L.* 1897, *Ch.* 784).

§ 17. **Relating to ballots and ballot boxes.** (*Repealed by L.* 1897, *Ch.* 784).

§ 18. **Vacancies; how voted for**—If, at any charter election to be held in the said city, there shall be one or more vacancies to be supplied in any office, and at the same time any person to be elected for the full term of said office, the term for which each person voted for is intended, shall be designated on the ballot. (*As amended L.* 1897, *Ch.* 784).

§ 19. **Qualifications of voters**—Every person entitled to vote for member of assembly, who shall, for the last thirty days, have been an actual resident of the ward or election district in which he offers his vote, and who is at the time an actual resident of such ward or election district, shall be entitled to vote there, but not elsewhere, for all or any of the officers to be chosen at such election. (*L.* 1898, *Ch.* 14).

Qualifications of voters—State Constitution, Art. II, § 1; Election Law, § 34. **Right to vote not to be denied**—United States Constitution, Amendments, Art. XIV, §§ 1, 2.

§ 20. **Canvass of votes at elections**—Immediately after the closing of the polls, the inspectors of election shall forthwith, without adjournment, canvass the votes received by them, and declare the result; and shall on the same or next day make a certificate stating

the number of votes given for each person for each office, and shall file such statement and certificate on the day of election, or the next day, with the clerk of the city. (*L.* 1880, *Ch.* 14).

Canvass of votes when ballot machines are used—Election Law, §§ 110–112; *Id.*, § 178.

§ 21. **Canvass of votes by common council**—The common council shall convene on the Friday succeeding any election provided by said charter at two o'clock in the afternoon, at their usual place of meeting, and shall forthwith determine and certify in the manner provided by law, what persons are duly elected at the said election to the several offices, respectively; such certificate shall be made in duplicate, one of which shall be filed with the clerk of the city and the other with the clerk of Monroe county. (*As amended L.* 1897, *Ch.* 784).

§ 22. **When common council shall elect**—If, at any election authorized by this act, any officer, except alderman, shall not have been chosen by reason of two or more candidates having received an equal number of votes, the common council shall, by ballot, elect such officer from the two candidates having the highest number of votes. (*L.* 1880, *Ch.* 14).

§ 23. **Vacancies**—Whenever a vacancy shall occur in the office of alderman or police justice for any cause, the common council of said city shall immediately appoint a special election to be held in said city, or in the ward for which such alderman was chosen, not less than twenty-five days nor more than forty days from the time of such appointment, unless such vacancy shall occur within three months before the Tuesday succeeding the first Monday in November in an odd numbered year,

and, in such case, it shall be optional with the common council to order a special election or not, as it shall deem expedient. (*As amended L.* 1897, *Ch.* 784).

See note under Old Charter, § 24, below.

Filling vacancies—State Constitution, Art. X, § 5; Election Law, § 4.

§ 24. **Vacancies filled by common council**—In case a vacancy shall occur in the office of any of the officers before named, except an alderman or police justice, the common council may, when not otherwise provided, in its discretion, fill such vacancy by the appointment of a suitable person who is an elector, and if appointed for a ward, who is a resident of the ward for which he shall be appointed; and any officer, appointed to fill a vacancy, if the office is elective, shall hold by virtue of such appointment until and including the thirty-first day of December following the next succeeding biennial charter election, unless otherwise provided. If an elective officer, whose office shall have become vacant, was one of a class, a successor for the unexpired term shall be elected at the next biennial charter election, except as may in any case be expressly provided. (*As amended L.* 1897, *Ch.* 784).

NOTE—As to appointing powers of Mayor, see White Charter, § 49, this book, p. 64; as to filling vacancy in office of police justice, White Charter, § 392, p. 263; filing vacancy in office of alderman, White Charter, § 27, p. 39.

§ 25. **Special elections**—Whenever a special election is to be held the common council shall cause to be delivered to the inspectors of election, in the ward and election districts in which such election is to be held, a notice signed by its clerk specifying the officers to be chosen and the day and place in the ward, or in the several wards of said city, at which such election is to be held, and

the proceedings at such election shall be as at the biennial charter election. Such notice shall also be published in all the daily newspapers of the city at least once before such special election period. On the Friday succeeding such election the common council of that year shall convene at two o'clock in the afternoon at its usual place of meeting, and the same proceedings shall then and there be had as prescribed in case of said charter election period. (*As amended L.* 1897, *Ch.* 784).

Special elections—Election Law, § 4.

§ 26. **Certain officers to take and file oath of office; bonds of police clerk and constables; city clerk to administer oaths, etc.**—Every person elected or appointed to the office of mayor, police justice, city clerk, police clerk, alderman, constable, supervisor, treasurer or commissioner of common schools in the city of Rochester, shall, before he enters on the duties of his office, and within five days after being notified of such election or appointment, take the oath of office prescribed by the constitution of the state before any officer authorized to administer oaths or take affidavits and file the same with the city clerk; and said police clerk shall also, within said five days, execute a bond to the city of Rochester in the penalty of five thousand dollars, with two sureties, to be approved by the mayor of said city, conditioned faithfully to perform the duties of police clerk, and to pay over the moneys, and to make the report hereinafter required, and file the same in the office of the clerk of the said city. Every person chosen, elected or appointed to the office of constable, before he enters on the duties of his office and within eight days after he shall be notified of his election or appointment, shall execute a bond, with at least two sufficient sureties to be approved in writing by a judge of the municipal court of the city of Rochester, in which said bond such constable and his sureties shall jointly and sev-

erally agree to pay each and every person who may be entitled thereto all such sums of money as the said constable may become liable to pay on account of any execution which shall be delivered to him for collection; and shall also jointly and severally agree and become liable to pay each and every such person for any damages which he may sustain from or by any act or thing done by said constable, by virtue of his office of constable, and the said person so chosen, elected or appointed to the said office of constable shall, also, within eight days, and before he enters on the duties of his office, cause said bond so approved as aforesaid to be filed with the city clerk, and a copy of such bond, certified by the city clerk, shall be presumptive evidence in all courts of the execution thereof by such constable and his sureties. Every constable chosen, elected or appointed, as aforesaid, shall, in good faith, be an actual resident of the ward in or for which he shall be chosen, elected or appointed. The city clerk is hereby authorized to administer all oaths and to take affidavits and acknowledgments within said city, and to receive the same fees that are allowed to commissioners of deeds for the same service. (*As amended L.* 1881, *Ch.* 343).

Duties of constables in service of process—Old Charter, § 63, this book, p. 335.

Public officers must take oath of office—Public Officers Law, § 10; failure to take oath—Penal Code, §§ 42, 43; effect on official acts of failure to take oath—Public Officers Law, § 15.

Bond of police clerks—White Charter, § 398, this book, p. 204.

§ 27. **Other officers to take and file oath of office**—Every person chosen or appointed by the common council to any other office except those enumerated in the last section before he enters on the duties of his office, and within five days after being notified of his election or appointment, shall cause to be filed in the office of the city clerk a notice in writing

signifying his acceptance of such office and take the oath of office prescribed by the constitution of this state before any officer authorized to administer oaths or take affidavits, and file the same with the city clerk. (*L.* 1880, *Ch.* 14).

Form of oath to be taken by executive and judicial officers—State Constitution, Art. XIII, § 1.

§ 28. **Neglect to qualify deemed a refusal to serve**—If any person chosen or appointed to any office specified in the last two sections shall not take and subscribe the oath of office and file the same as therein directed, or shall not cause a notice of acceptance to be filed as therein directed, or if required by law or by the common council to execute an official bond or undertaking, shall neglect to execute and file the same in the manner and within the time prescribed by law or by the common council, such neglect shall be deemed a refusal to serve. (*As amended L.* 1881, *Ch.* 343).

Oath of office must be filed within fifteen days—Public Officers Law, § 20.

§ 32. **Election expenses a city charge**—The expenses of any election to be held as provided by this act shall be city charges, and defrayed in the same manner as other contingent expenses of the city. (*L.* 1880, *Ch.* 14).

§ 63. **Duties of constables; service of criminal process**—The constables elected in said city, or in the different towns of the county of Monroe, shall not be compelled to serve or execute any process, notice or paper whatever, issued by the police justice or the municipal court of said city, in execution of the laws of the state for the prevention of crime and the punishment of criminal offenders, or of the police laws and regulations of the state or of said city; nor shall the county of Monroe, or any of the towns thereof, or said city, be liable to pay any such constable any fees for serving

or executing such paper or process. In other respects the constables elected in said city shall have within said city and the county of Monroe, the same authority and compensation, and be subject to the same duties, as the constables of the several towns of said county. (*L.* 1880, *Ch.* 14).

Bonds of constables—Old Charter, § 20, this book, p. 333.

§ 290. **Old Charter deemed a public act**—This charter shall be deemed a public act, and the legislature may at any time repeal, modify or alter the same. (*L.* 1880, *Ch.* 14).

Repealing clause of Old Charter—All acts and parts of acts, so far as inconsistent with or repugnant to this act or to the charter as hereby amended, are hereby repealed or declared inapplicable to the said city; but the repeal hereby of any statutory provision shall not affect any action, proceeding, suit or prosecution had or commenced prior to the time when this act shall take effect. (*L.* 1880, *Ch.* 14, § 2, after § 290).

Repealing clause of White Charter—§ 482, this book, p. 324.

Construction of certain words in Old Charter—Whenever, in this act, or in the act which this act amends, the words "owner" or "person" appears, it shall be deemed to include a corporation and joint association, as well as a natural person, and a word used in the singular number or masculine gender shall include the plural number and feminine and neuter gender. (*Added by L.* 1890, *Ch.* 561).

Construction of words in White Charter—§ 473, this book, p. 324.

MOUNT HOPE CEMETERY

§ 73. **Government of Mount Hope cemetery**—Mount Hope cemetery shall be under the control of three commissioners who shall constitute a board of commissioners. (*L.* 1880, *Ch.* 14).

NOTE—Commissioners of Mount Hope cemetery were formerly appointed by the common council (Old Charter, § 8, as amended L. 1888, ch. 86). They are now appointed by the mayor under White Charter, § 49, this book, p. 64, pursuant to opinion of the corporation counsel.

§ 74. **Duties of commissioners of Mount Hope cemetery; arrest of offenders; powers to pass ordinances; misdemeanors** — The commissioners of Mount Hope cemetery shall have the care, custody and management of the cemetery, and everything in or upon the same, including the fences surrounding the same, and shall employ a superintendent and such other persons as they may deem proper, and regulate their compensation and duties, and the said commissioners, superintendent and such employees as shall be specially designated by said commissioners, shall have power and authority, respectively, to arrest any person or persons by him or them found violating in, upon or within fifty feet adjoining said cemetery, any of the penal or other ordinances, rules or regulations of said commissioners, or of the common council of said city, or any law or statute of this state, and to take the person or persons thus arrested before the police justice, or one of the judges of the municipal court of said city, to be dealt with in the same manner as if such person or persons had been arrested upon a warrant theretofore duly issued, or shall, after such arrest deliver the person or persons so arrested to a member of the police department of said department of said city,

whose duty it shall be to take the person or persons so arrested before said justice or judge, to be dealt with as if arrested upon a warrant, as aforesaid, and it shall be the duty of such commissioners, superintendent and employees, respectively, to enforce any and all of said laws, ordinances, rules and regulations violated at the place or places aforesaid. The said commissioners shall cause suitable maps to be made and perfected of all the grounds, roads and lots in said cemetery, and shall regulate the sales and prices of lots and interments therein, and shall make such rules and regulations for the use, protection and improvement of the cemetery, including all of the buildings, monuments, tombstones, fences and other articles in or upon the same, as they shall deem proper, but in no case shall such commissioners, however, charge a fee to visitors, and the violation of any such rules and regulations shall be deemed a misdemeanor, and punishable as such. (*As amended L.* 1892, *Ch.* 190).

§ 75. **Mount Hope cemetery fund; how applied**—The commissioners of Mount Hope cemetery shall cause a fund to be provided from the receipts of the said cemetery, by appropriating annually not less than ten per centum of the gross receipts, which shall be applied, first, to the payment of mortgages now existing upon portions of the cemetery, and second, to create a repair fund, which shall not exceed fifty thousand dollars, which shall be invested, and as soon as it is of sufficient amount, the interest thereof shall be applied solely to the repairing of roads, lawns, hill-sides, monuments, abandoned lots and public grounds, and such repair fund shall never, under any pretext or evasion, be diverted from this declared purpose, and the interest thereof shall be used annually as hereabove directed. Said commissioners may create a fund for perpetual repairs of particular lots in the following manner: Any person may pay

to the commissioners of Mount Hope cemetery a sum of money deemed sufficient by said commissioners, for the purpose of keeping in order any lot or parcel of land in such cemetery; and thereafter the interest obtained on such sum, from time to time, as occasion may require, shall be expended on such lot or parcel of land for the purpose of keeping the same in repair by or under the direction of the commissioners of said cemetery. The commissioners shall pay such sums paid to them to the treasurer of the city of Rochester, who shall immediately deposit said sums of money in such savings bank or banks or trust companies as the commissioners of said cemetery shall direct, which moneys shall be kept in special deposit, on interest, apart from all other moneys belonging to Mount Hope cemetery. No part of such deposits except the interest which shall accrue on such moneys shall be drawn from such savings banks or trust companies except for permanent investment in registered bonds of the United States, the state of New York, the county of Monroe, or the city of Rochester; and such bonds shall be registered in the name of the said treasurer and of the commissioners of Mount Hope cemetery. All moneys drawn from any savings bank or trust company, from said perpetual repair fund shall be drawn by check signed by the treasurer, and countersigned by a majority of the commissioners of Mount Hope cemetery, and not otherwise. To each person making any such payment or deposit for the purpose of keeping any lot in repair in Mount Hope cemetery, the treasurer shall give a certificate signed by himself and by a majority of the commissioners of Mount Hope, and by the city clerk, and to which the city seal shall be attached, which certificate shall state the amount of the deposit, the name of the person making the deposit, a description of the lot for which the deposit is made and a covenant on the part of said city that the interest of said

deposit thereafter, from time to time, as occasion may require, shall be expended on said lot by said commissioners for the purpose of keeping said lot in repair, and the commissioners of said cemetery and the city clerk shall keep a record of such certificates issued. But in no event shall the city of Rochester ever be liable to repay the principal paid into said perpetual repair fund. The said commissioners are hereby authorized and empowered at any regular or special meeting of their said board, by resolution, to divide the whole or any part of the lands now belonging to or which may hereafter be purchased for the purposes of said cemetery, into such definite sections or parts as said commissioners may designate and determine; and each of said sections or parts shall have such a name and such boundaries as the said commissioners shall determine. Said resolution shall designate the boundary lines of each of said sections or parts and the name by which each of said sections or parts shall be known, and shall, when duly passed, together with the date of its passage be recorded in a book to be kept by or under the control of said commissioners for that purpose; and when said resolution shall be duly recorded in said book the same shall be subscribed by said commissioners or a majority thereof. A copy of said resolution together with the date of its passage, duly certified by said commissioners or a majority thereof to be correct, shall be immediately filed by said commissioners in the office of the clerk of the city of Rochester, and shall also be recorded by said clerk in a book to be kept by him for that purpose. Said commissioners are hereby authorized and empowered to create a fund to be known as the "special section fund," for the care of the lots in any definite section or part of said cemetery which may be designated by said commissioners as hereinbefore provided. Said fund shall be created by appro-

priating annually a sum not exceeding twenty per centum of the gross receipts from the sales of the lots in such definite section or part, and shall be used only for the care of the surface of said lots in such definite section or part, but not for the erection or care of mounds or other structures above the general surface of the ground. Said "special section fund" shall be invested in the same manner as other trust funds of said cemetery are invested and shall never be diverted from its declared purpose. Whenever the city of Rochester shall by deed convey any lot or portion of said cemetery for burial purposes, which said lot or portion shall be included in any part or section designated by said commissioners as hereinbefore provided, said deed shall contain an agreement on the part of said city that the part of said "special section fund" applicable thereto shall be applied to the care of the lands described in said deed, as hereinbefore provided. (*As amended L.* 1903, *Ch.* 117).

§ 76. **Disposition of cemetery monies**—The city treasurer shall receive and deposit in one or more of the savings banks, or the trust and safe deposit companies in the city, of good standing, all moneys from the sale of lots and other sources, and also all penalties collected for violations of city ordinances in relation to Mount Hope, and shall pay all expenses incurred at Mount Hope, by making his check upon such savings banks, or the trust and safe deposit companies, which check in all cases shall be countersigned by two or more commissioners. The city treasurer may, under the direction and with the consent of said board of commissioners, invest any of said moneys in bonds of the city of Rochester, county of Monroe, or state of New York. (*As amended L.* 1894, *Ch.* 280).

§ 77. **Deeds of cemetery lots; compensation of commissioners; devises, etc.** All deeds and conveyances of lots

shall be executed by the mayor and city clerk and countersigned by the treasurer, and recorded in the city clerk's office. The commissioners of Mount Hope cemetery shall receive no compensation for their services, and shall make an annual report, under oath, to the common council, at its last meeting in each year, of their receipts and expenditures and of all matters committed to their charge. The said commissioners may take by any devise, bequest or grant from the owner or owners of any lot in said cemetery, or a part thereof, and shall thereafter own the same, in trust to the extent and in the manner, and for the purpose specified in and by the deed, will or other conveyance by which the trust is created, and such lot, or part thereof, shall thereafter be forever inalienable in any manner, except as may be otherwise provided by said owner, or owners, in his or their lifetime, and the said commissioners shall thereafter permit the interment of only such person or persons, or class of persons, in such lot or portion as may be designated by said owner or owners, in his or their said lifetime. (*As amended L.* 1897, *Ch.* 784).

§ 219. **Mount Hope cemetery property exempt from taxes, assessments and executions**—Mount Hope cemetery, and all lots and plats therein, which have been, or shall hereafter be, conveyed by the corporation of said city, as places for the burial of the dead, shall forever be exempt from taxation, and from assessments for the improvement thereof, or for any purpose whatever, and shall not be liable to be sold on execution, or be applied to the payment of debts, by any assignment under any insolvent law, or by any compulsory process of law. (*L.* 1880, *Ch.* 14).

Act authorizing common council to acquire land for cemetery purposes—L. 1869, Ch. 727; amended L. 1870, Ch. 760; §§ 1 and 2 re-enacted L. 1873, Ch. 452; amended L. 1875, Ch. 206; L. 1892, Ch. 518; L. 1898, Ch. 543.

See People ex rel. Oak Hill Cemetery Assn. vs. Pratt, 129 N. Y. 68.

Provisions of Old Charter as to acquiring lands for Mt. Hope cemetery by purchase or condemnation proceedings — §§ 173-180, this book, pp. 223-235.

Act preventing sale of cemetery lands not to apply to Rochester—L. 1879, Ch. 310.

Cemeteries incorporated under L. 1847, Ch. 133, not exempt from assessments for local improvements—Buffalo City Cemetery vs. Buffalo, 46 N. Y. 506; same title, 43 Hun 127, affirmed 118 N. Y. 61.

Removal of remains from cemetery of a religious corporation — Religious Corporations Law, § 8.

Act authorizing removal of remains from Brighton cemetery to Mt. Hope—L. 1893, Ch. 228.

Note—The first interment in Mt. Hope cemetery was on August 18, 1838, but the cemetery was not dedicated till October, 1838, at which time a consecration service was read by Dr. Whitehouse, of St. Luke's church, and the Rev. Pharcellus Church, of the First Baptist church, delivered an address.

MUNICIPAL CODE

OF THE

CITY OF ROCHESTER

SPECIAL LAWS

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SPECIAL LAWS

NOTE.—WITH THE SPECIAL LAWS RELATING TO THE CITY OF ROCHESTER PRINTED BELOW ARE INCLUDED CERTAIN ACTS AFFECTING CITIES OF THE SECOND CLASS.

ANNUAL FINANCIAL REPORTS

AN ACT TO PROVIDE FOR ANNUAL REPORTS BY CITIES OF THE SECOND AND THIRD CLASS OF THEIR FINANCIAL CONDITION. (*L.* 1903, *Ch.* 347).

Section 1. **Contents of report**—Every city of the second or third class shall annually within sixty days after the close of its fiscal year, make a report of its financial condition to the secretary of state. Such a report shall contain (1) an accurate statement in summarized form and also in detail of the financial receipts of the city from all sources for the last fiscal year; (2) a statement in detail of the debt of said city at the close of the last fiscal year, the nature thereof and the purposes for which it was incurred; (3) and such other, further or more specific information in relation to the cost of any branch of the municipal service or any improvement therein, as may be required by the secretary of state.

§ 2. **Chief fiscal officers shall make report**—The secretary of state shall annually before the close of its fiscal year and as much earlier as practicable, furnish to the chief fiscal officer of every such city, to the mayor thereof and to every officer or board therein having charge of receipts and expenditures for any branch of the municipal service, independently of the mayor and council of such city, printed blanks and forms on which shall be indicated the information required according to the provisions of this act, together with suitable printed instructions as to filling the same. The mayor and chief fiscal officers shall each make a separate report of the financial condition of his city according to the provisions of this act, to the secretary of state, and duly verify the same. In case there is an officer or board having charge of some branch of the municipal service as aforesaid,

the secretary of such board, if there be a secretary, and if not, then the president thereof, shall make, if required by the secretary of state, a verified report as to that branch of the municipal service of which it has charge. All or less than all of such officers may unite in making a joint verified report instead of separate reports. If any such report shall not contain the information required by the secretary of state, under the provisions of this act, he may submit a further request or requests to any of said officers therefor, and it shall be their duty to furnish the same without delay. Any officer required to make a report under the provisions of this act who shall wilfully neglect and refuse to make the same, or wilfully withhold or suppress any information required by this act to be set forth in a report, shall be guilty of a misdemeanor.

§ 3. **When in effect**—This act shall take effect immediately.

ARMORY

AN ACT AUTHORIZING THE CITY OF ROCHESTER TO ACQUIRE AND TRANSFER TO THE STATE A SITE IN SUCH CITY FOR THE ERECTION OF AN ARMORY THEREON, FOR THE USE OF THE NATIONAL GUARD AND NAVAL MILITIA IN SUCH CITY, AND TO RECEIVE IN EXCHANGE THEREFOR THE PRESENT ARMORY IN SUCH CITY NOW OWNED BY THE STATE. (*L.* 1898, *Ch.* 567).

Section 1. **Common council may acquire armory site**—The common council of the city of Rochester is hereby authorized to acquire a site in such city suitable for the erection thereon of a state armory for the use of the National Guard and Naval Militia in such city; and to cause the expense thereof to be levied and collected upon the property in such city subject to taxation in the same manner as other city taxes are levied and collected. Upon the acquisition of such site, the mayor of such city when duly authorized by a resolution of the common council, shall in behalf of the city cede, transfer and convey such property to the state of New York, but no such conveyance shall be valid, unless the site for such armory shall be approved by a commission consisting of the adjutant-general, the inspector-general and the chief of ordnance, nor unless the title to such property shall be certified by the attorney-general to be free from all incumbrances, and that the conveyance thereof is in due form and

vests the title of the property in the people of the state of New York. Upon such transfer being made as provided by this act, and such site having been accepted by the armory commission aforesaid, the comptroller of the state shall convey to the city of Rochester in exchange for such armory site and in full compensation therefor the present armory property in the city of Rochester, owned by the state, located on Wood street in such city. The common council of the city of Rochester may provide that the armory property located on Wood street in such city, if conveyed to the state by the city in pursuance of this act, shall be applied to such municipal purposes as to the common council shall seem best; but until the state has provided other armory facilities in such city for the use of the National Guard and Naval Militia, the common council shall rent such armory property to the state of New York at such annual rental as may be agreed upon between the common council of such city and a commission consisting of the adjudant-general, the inspector-general and chief of ordnance.

§ 2. **When in effect**—This act shall take effect immediately.

CITY HALL

An Act in relation to the erection of public buildings for the use of the city of Rochester. (*L.* 1872 *Ch.* 219).

L. 1872, Ch. 219, held constitutional—People ex rel. Hayden vs. City of Rochester, 50 N. Y. 525.

COAL

Note—The provisions of the General City Law (*L.* 1909, *Ch.* 32), as to the sale and delivery of coal in cities of the second class, are as follows:

§ 150. **Attempting to deliver or sell less than a legal ton**—In all transactions relating to the sale or delivery of coal two thousand avoirdupois pounds in weight shall constitute a legal ton. A person, firm or corporation, in a city of the first or second class attempting to sell or deliver less than two thousand pounds by weight to a ton of coal, or a proper proportion thereof to quantities less than a ton, shall be liable to a penalty of not exceeding fifty dollars, provided that in all cases thirty pounds to a ton shall be allowed for the variation in scales and wastage.

§ 151. **Delivery tickets**—It shall be unlawful for any person, firm or corporation delivering coal in cities of the first or second class to deliver or cause to be delivered any quantity or quantities of coal which shall have been sold by weight, without each such delivery being accompanied by a delivery ticket, and a duplicate thereof, on each of which shall be in ink, or other indelible substance, distinctly expressed in pounds the quantity or quantities of coal contained in the cart, wagon or other vehicle used in such delivery, with the name of the purchaser thereof and the name of the dealer from whom purchased. One of such tickets shall be delivered to the purchaser of the coal specified thereon, and the other of such tickets shall be retained by the seller of the coal. Any person, firm or corporation who shall violate the provisions of this section shall be liable to a penalty of not exceeding fifty dollars.

§ 152. **Delivery of entire cargo**. The preceding section shall not apply to coal delivered by the entire cargo direct from the vessel containing the same to one destination and accepted by the purchaser on the original bill of lading as proof of weight; but with every such delivery of an entire cargo of coal in any city of the first or second class, there shall be delivered to the purchaser thereof one of the original bills of lading, issued by the person, firm or corporation by whom the coal was loaded into the vessel from which such coal is delivered to the purchaser of the entire cargo thereof, on each of which bills of lading there shall be in ink or other indelible substance distinctly expressed the date and place of loading such cargo, and the number of pounds contained therein. Any person, firm or corporation who shall violate the provisions of this section shall be liable to a penalty of not exceeding fifty dollars.

§ 153. **Designation of scales**—There may be designated by the respective mayors of the cities of the first and second class, stationary or movable scales, suitable for the purpose of weighing coal, the owners of which may tender the same for public use in different parts of the city in such convenience in number and locality as shall be deemed necessary, on which the coal or coal vehicle, with or without coal, may be weighed at the request of the purchaser of the coal. The scales so designated shall be provided at the expense of the owners thereof, with test weights, and shall be subject at all

times to the inspection and supervision of the sealers or inspectors of weights and measures in such city who shall inspect such scales at least once in each month. Such scales shall also be provided by the owner thereof with a competent weighmaster. The owner of such scales shall be entitled to charge for weighing coal and coal vehicles containing coal, at such *sales, a fee of not exceeding fifteen cents per ton of coal; empty vehicles returning to such scale after delivery of the coal so weighed therein shall be re-weighed without further charge.

§ 154. **Right of purchasers to have coal re-weighed** It shall be the right of every purchaser of coal in any of the cities of the first and second class, before accepting the delivery of the same, to have any of the delivery of such coal weighed at his expense, at any of the scales designated under the provisions of the preceding sections, provided such scales are within a half mile of the place of loading or the place of the delivery of the coal, and for this purpose to require that any vehicle containing coal purchased by him shall be taken by the driver or other person in charge thereof to such scales for the purpose of having the same weighed, and after the delivery of the coal to require that the vehicle from which such coal so purchased shall have been delivered shall be taken by the driver thereof, or any other person in charge thereof, to such scales to be weighed at the expense of the purchaser thereof, and a certificate of the weight of such coal, so weighed as aforesaid shall thereupon be furnished to the purchaser of such coal by the owner of the scales at which such coal is so weighed.

§ 155. **Penalty for refusal to permit coal to be weighed** — The refusal of any seller of coal to permit coal purchased from him to be re-weighed at the request of the purchaser thereof, as aforesaid, or any driver or other person in charge of a vehicle containing coal, or from which coal has been delivered, to take the same at the request of the purchaser to such scale or such scales for the purpose of having the same weighed, provided however that the purchaser of such coal shall have first paid the owners of the scales or to the seller of such coal or to the driver or other person in charge of the

*So in session laws. Should read "scales."

vehicle containing such coal, an amount sufficient to meet the charges for weighing such coal, shall render the person, firm or corporation selling the coal liable to a penalty not to exceed fifty dollars.

§ 156. **Owner of scales to give bonds** The owner of such scales so designated, shall enter into a bond with the city in which such scales are situated, in the sum of five hundred dollars with two sufficient sureties, conditioned that such scales shall be kept in such condition as at all times to properly register the weight of coal, and that the person weighing coal thereat shall perform his duties faithfully, and furnish correct certificates to all persons having coal or coal vehicles weighed at such scales. The amount of such bond shall be recoverable at the suit of the city on proof that any of the conditions thereof have not been complied with.

§ 157. **Publication of designation** The designation of scales shall be in writing signed by the mayor of the city in which such scales are situated, and a copy thereof inserted in any official publication in such city, and if there be none in a newspaper published therein.

§ 158. **Penalty for fraudulent weighing** Any owner of such scales or any agent or representative of his, or any weighmaster employed by him thereat, who shall be in any manner concerned in any fraudulent weighing of coal at such scales, shall be guilty of a misdemeanor and shall be punishable by fine of not exceeding five hundred dollars or by imprisonment for one year, or by both such fine and imprisonment.

§ 159. **Owner of scales to keep memorandum book** Every owner of such scales shall keep a book in which shall be entered in ink a memorandum of every load of coal weighed at such scales, showing the name of the person, firm or corporation delivering such coal, the net weight thereof as shown by the delivery ticket thereof of such person, firm or corporation, the name of the purchaser thereof, the gross and net weight of the coal so weighed, and the date of weighing. Such book shall be the book of original entries, and all certificates delivered by the owner of such scales shall be copies of the entries contained therein, and such books shall at all reasonable hours be open to the inspection of any citizen.

§ 160. **Recovery and disposition of penalties** The penalties provided in this article shall be recoverable at the suit of the city in which such penalties are incurred, and the amount so collected, as well as any amount collected in suits brought to recover the amounts due on bonds given under the provision of this article, shall be paid over, one-half to any police pension or relief fund in such city, and one-half to any firemen's pension or relief fund therein.

§ 161. **Bills of lading; penalty for altering** A person guilty of altering with intent to defraud, any original bill of lading issued by the person, firm or corporation by whom the coal was loaded into the vessel in which such coal is transported to any city of the first or second class, in this state, or of uttering any such bill of lading so altered, or who is guilty of making, preparing or subscribing or uttering a false or fraudulent manifest, invoice or bill of lading thereof, or removing any part of such cargo of coal without having the amount thereof certified to in writing on such original bill of lading, by the person, firm or corporation receiving the coal so removed, and by the captain of the vessel containing such cargo, is punishable by imprisonment in a state prison, not exceeding three years or by a fine not exceeding one thousand dollars, or both, and the delivery of any fraudulent bill of lading to any purchaser of coal shall be presumptive evidence of uttering the same with criminal intent.

DOGS

An Act to provide for the licensing of dogs in cities of the second class, for the care and protection of lost, strayed and homeless dogs, for securing and protecting the rights of the owners thereof, and for the protection of the public. *L.* 1902, *Ch.* 294.

Section 1. **License fee** Every person who owns or harbors any dog within the corporate limits of any city of the second class who desires to maintain or preserve any right of property in such dog must procure yearly a license for the dog so owned or harbored and shall pay therefor the sum of one dollar.

§ 2. **Unlicensed dogs not to be owned or to run at large** It shall be unlawful hereafter for any dog to be owned, possessed or harbored, or to run or be at large in any of the streets, alleys, parks or public places within the corporate limits of any city of the second class, without being duly licensed and wearing the metal tag as herein provided.

§ 3. **Licenses; by whom granted**—The license shall be granted upon application to the city clerk, shall be signed by the mayor's clerk and shall continue in force until the first day of May next ensuing after its issue. Every person receiving such license shall pay the license fee hereinbefore mentioned to the city clerk, who shall daily deposit the sums of money so received with the treasurer of the city.

§ 4. **Description of dog**—In applying for such license, the owner shall state in writing the name, sex, breed, age, color and marking of the dog for which a license is to be procured.

§ 5. **Collar to be worn**—Every dog so licensed must wear around its neck a collar to which shall be attached a metal tag, distinctly marked with the year in which the same is issued, and a number designated by the city clerk, which number shall be stated in the license granted. Such metal tag shall be furnished by the city, and the use of any other tag as a substitute therefor shall be a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty dollars, or by imprisonment for not less than fifty days, or by both such fine and imprisonment.

§ 6. **Record of licenses** The city clerk shall keep in a book to be provided for that purpose a record of all dog licenses granted, with the name and residence of the person to whom issued, and the number designated upon the metal tag furnished therewith.

§ 7. **Term and renewal of license** Licenses granted under the provisions of this act shall date from the first day of May in each year, and must be renewed on expiration by the payment of one dollar for each renewal. The certificate of license or renewal shall be granted upon a similar application to that made in applying for the original license, and shall state the name and address of the

owner of the dog and also the number of such license or renewal. No license shall be transferred without the consent of the city clerk endorsed thereon.

§ 8. **Seizure of unlicensed dogs**—It shall be lawful for any peace officer or any person duly authorized in writing by the mayor or for the poundmaster or any of his duly authorized assistants, or for the duly authorized representatives of a person or corporation under contract with the city, to capture, seize and deliver to the public pound or any suitable place to be approved by the mayor any dog found running at large in any of the streets, alleys, parks or public places within any city of the second class, not licensed, and not wearing the metal tag as provided by this act.

§ 9. **Possession of dog, how resumed**—Any dog so seized and impounded may be redeemed by any person producing the license thereof, and proving ownership of such dog within seventy-two hours after such seizure and impoundage. If it shall be shown that the license so produced was issued prior to the time when such dog was so seized or impounded, no payment shall be exacted for the return of the dog; otherwise, before the owner shall be permitted to resume possession of the said dog, he shall pay the sum of two dollars to the city clerk who shall thereupon issue an order directing the return of such dog to the owner. All sums of money so received shall be deposited with the city treasurer in like manner as the license fees hereinbefore provided for. If the owner of a dog seized or impounded under the provisions of this act does not resume its possession by compliance with the foregoing provisions within seventy-two hours after the seizure and impounding thereof he shall forfeit all right of property in such dog.

§ 10. **Person harboring dog deemed owner**—Any person owning or harboring a dog for three consecutive days shall be deemed to be the owner thereof.

§ 11. **Mayor may prohibit dogs from running at large**—Whenever the mayor of any city of the second class shall deem it necessary for the protection of the public, he shall issue an order prohibiting for a certain time therein specified, any or all dogs from running at large in any public street or place within such city, unless

such dogs be securely muzzled or led by a line or chain, so as to effectually prevent them from biting any person or animal. Such order shall be published in the official newspapers of the city for such time as such mayor shall deem necessary.

§ 12. **Interference with officer or other person** No person shall molest or interfere in any way with any peace officer, poundmaster or any of his duly authorized assistants, or with the duly authorized agents of any person or corporation under a contract with a city while engaged in performing work under the provisions of this act. A violation of the provisions of this section shall be a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars, or by imprisonment for not less than twenty-five days, or by both such fine and imprisonment.

§ 13. **Dog kennels** The poundmaster, under the direction of the mayor of any city of the second class shall have power to construct a suitable building for a dog pound and shelter for lost, strayed or homeless dogs, the cost of which shall be paid from the license fees collected under the provisions of this act.

§ 14. **Contracts for seizing and impounding dogs** The mayor of any city of the second class instead of authorizing the construction of a building as provided in the last section may, in his discretion, contract with an incorporated society for the prevention of cruelty to animals having jurisdiction in such city, for the capture and impoundage of all unlicensed dogs, and for the maintenance of a shelter for lost, strayed or homeless dogs therein, provided, however, that the compensation to be paid to such person or corporation by such contract shall not exceed in any one year the amount collected by the city from the payment of license fees during the current year for which such contract is made. The mayor may prescribe in the contract the manner in which the work is to be done and in which payments are to be made by the city thereunder and may also direct the disposition to be made of any and all dogs seized pursuant to the provisions of this act. The mayor shall also have power to order the destruction of any dog which he may deem dangerous or vicious, whether licensed or not, after three days written notice to and an opportunity to be heard by the owner of such dog.

§ 15. **Violation of act, how punished** Any person violating any of the provisions of this act, for which no other penalty is provided, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five nor more than ten dollars, or by imprisonment for not less than five nor more than ten days, or by both such fine and imprisonment.

§ 16. **Act not to apply to certain dogs** The provisions of this act shall not apply to dogs owned by non-residents passing through any city of the second class, nor to dogs brought to any such city and entered for exhibition at any dog show.

§ 17. **Repeal**— All laws and the city ordinances of any city of the second class inconsistent with the provisions of this act are hereby repealed.

§ 18. **When to take effect** This act shall take effect on the first day of April, nineteen hundred and two.

License fees for dogs are public moneys and cannot be directly appropriated to private corporations—Fox vs. Mohawk and H. R. Humane Society, 165 N. Y. 517.

FIRE DEPARTMENT

AN ACT TO AMEND AND CONSOLIDATE THE SEVERAL ACTS RELATING TO THE "FIREMAN'S BENEVOLENT ASSOCIATION OF ROCHESTER," AND THE "FIRE DEPARTMENT OF THE CITY OF ROCHESTER." (*L.* 1864, *Ch.* 140).

§ 1. **Corporators** John Craigie, George B. Harris, Alfred S. Lane, Joseph B. Ward, L. Ward Clarke, Egbert B. Jennings, Thomas H. Pritchard, Darius Cole, Jr., George W. Parsons, Samuel M. Stewart, Abram Karnes, John Cowles and Richard Gilbert, and their successors, and all such other persons as now are, or hereafter may be, engineers of the fire department of the city of Rochester, or who may be members of any company recognized by the common council of said city, as belonging to the fire department thereof, or who shall have become entitled to, and received their certificates of exemption as firemen from the common council of said city, are hereby con

stituted a body corporate and politic, by the name of "The Fire Department of the City of Rochester," and by that name shall have perpetual succession, and may sue and be sued in any court whatever.

§ 2. **Objects of corporation** The general business and objects of said corporation, shall be, to accumulate a fund for the relief of indigent members of said fire department, disabled while actually doing duty as firemen, and of such persons as shall have become entitled to, and received their certificates of exemption as firemen from the common council of said city, and also of such persons as shall be injured while actually doing duty, in the employ of said city, in managing or operating the steam fire engines, or other fire apparatus of said city, and of the families of all the aforesaid persons, which fund shall be appropriated and used in no other manner, except as hereinafter otherwise provided.

§ 3. **Powers and rights of corporation**—For the aforesaid purposes said corporation shall have power to take, hold and convey real and personal property to an amount not exceeding one hundred thousand dollars; and shall have and be entitled to all the rights and benefits conferred by law upon the fire departments of other cities in this state. (*As amended L.* 1879, *Ch.* 9).

§ 4. **Trustees; officers; quorum** The persons particularly named in the first section of this act, shall be the first trustees of said corporation, who shall elect from their number a president, two vice-presidents, a secretary, treasurer and collector; seven of the said trustees, of whom the president, or one of the vice-presidents shall be one, shall form a quorum for the transaction of business; and the affirmative vote of at least six members of the board shall be requisite in making any order for, or authorizing the investment of, any moneys, or the sale or transfer of any stock, securities or property, belonging to the corporation.

§ 5. **Vacancies; duties of trustees** All vacancies in the board of trustees caused by death, resignation or otherwise shall be filled by the board by ballot, without unnecessary delay, and at least six votes shall be necessary for the election of any trustee. The said trustees shall hold a regular meeting at least once in each month, to

receive the reports of their officers, as to the business and affairs of the corporation, and to transact such business as may be necessary; and every trustee omitting to attend the regular meetings of the board, for six months in succession, or having ceased to be a resident of the city of Rochester, may thereupon, at the option of said board, be considered as having vacated his place, and a successor may be elected to fill the same. The said trustees shall not, as such, directly or indirectly, receive any pay or emolument for their services.

§ 6. **Powers of trustees.** The business of said corporation shall be managed and directed by said board of trustees. They shall have power, from time to time, to make, constitute, ordain and establish, alter and amend such by-laws, rules and regulations, as they shall judge proper, for the times and places of holding their meetings for the election of their officers, for prescribing their respective functions, and the mode of discharging the same, and their compensation, and generally, for managing and conducting the affairs of said corporation, provided such by-laws, rules and regulations are not repugnant to this act, nor to the constition or laws of this state, or of the United States.

§ 7. **Securities by officers, etc.** The subordinate officers and agents of the corporation shall respectively give such security for their fidelity and good conduct as the board of trustees may from time to time require.

§ 8. **Investment of moneys.** All the moneys of the department and corporation, shall be invested by said board of trustees, in bond and mortgage upon unincumbered real estate in the county of Monroe, or in the bonds of the city of Rochester, or of the county of Monroe aforesaid, or in the stocks of the state of New York, or of the United States.

§ 9. **Erection of firemen's monument; burial lots; diplomas; hospital patients; limitation of expenditures.** The said board of trustees is hereby authorized to expend a sum of money, not exceeding ten thousand dollars in the erection of a suitable monument in the fireman's burial lot in the Mount Hope cemetery in the city of Rochester, and not exceeding five thousand dollars in the erection of a suitable monument in the fireman's burial lot in the Holy Sepulcher cemetery in the town of Greece, county of Monroe, state of

New York, in memory of deceased firemen, and such other sum annually as may be necessary to take suitable care of said lots, and may also appropriate a sum of money, not exceeding five hundred dollars, for securing a suitable blank diploma for sale and presentation to exempt firemen, and may from time to time procure the printing of such number of copies of said diploma as may be necessary; and may also appropriate and expend such sum of money as may be sufficient to secure board, lodging, medical care and attendance, perpetually, for not more than four patients at one time, in the hospitals of said city of Rochester, according to the rules and regulations of said hospitals. But the entire amount of all the annual expenditures shall not exceed the annual income of said board of trustees. (*Amended L.* 1879, *Ch.* 9; *L.* 1887, *Ch.* 72).

§ 10. **Part of the revised statutes applicable**—This corporation shall be subject to the provisions of the eighteenth chapter of the first part of the revised statutes, so far as the same are applicable.

NOTE—Revised Statutes, Part I, Ch. 18, repealed by the General Corporation Law. (L. 1892, Ch. 687).

§ 11. **When in effect**—This act shall take effect immediately.

Foreign fire insurance corporations shall pay tax of two per cent. on annual business to treasurer of fire department for benefit of said department Insurance Law, §§ 133-136.

AN ACT AUTHORIZING AND EMPOWERING THE COMMON COUNCIL OF THE CITY OF ROCHESTER TO PURCHASE CERTAIN LAND AND PREMISES OF THE PROTECTIVES NUMBER ONE AND ERECT THEREON A BUILDING FOR THE ACCOMMODATION OF FIRE APPARATUS FOR THE EXTINGUISHMENT OF FIRES AND PROTECTION OF PROPERTY THEREAT. (*L.* 1881, *Ch.* 121).

§ 1. **Authority of common council**—The common council of the city of Rochester is hereby authorized and empowered to purchase of the protectives number one (an association duly incorporated) a certain lot or parcel of land situated on North Fitzhugh street in said city, now occupied by said protectives number one, and to erect thereon as speedily as may be, a building in the place and stead of a certain building now situated thereon, and in accordance with plans and specifications heretofore adopted by said protectives number one: provided said purchase price and building shall not exceed the sum

of twenty thousand dollars. And said common council may, whenever it shall deem proper, re-sell and convey said premises to said protectives number one.

§ 2. **Tax** For the purpose of carrying the provisions of section one into effect, the common council of said city is hereby authorized and empowered to raise by tax, to be included in the annual levy for the year eighteen hundred and eighty-one, such sum as in its judgment may be necessary for the purposes aforesaid, not exceeding twenty thousand dollars. And until the re-purchase and re-conveyance of said building and land by said protectives number one, the city may permit the use and occupation thereof by said protectives number one, on such terms as said common council may prescribe.

§ 3. **When in effect**—This act shall take effect immediately.

AN ACT FOR THE RELIEF OF CERTAIN FIREMEN IN THE CITY OF ROCHESTER. (*L.* 1894, *Ch.* 140).

§ 1. **Alert hose certificates**—The mayor of the city of Rochester is hereby authorized and empowered to grant certificates of exemption to members of the late Alert hose company of said city who were duly enrolled and in good standing in said company on the first day of November, eighteen hundred and ninety-three, in like manner and with the same effect as though they had served the full term of five years without pay as volunteer firemen.

§ 2. **When in effect**—This act shall take effect immediately.

AN ACT TO ESTABLISH A PENSION FUND FOR THE PAID FIRE DEPARTMENT OF THE CITY OF ROCHESTER. (*L.* 1894, *Ch.* 524).

Section 1. **Trustees of pension fund** The mayor of the city of Rochester, for the time being, and his successors in office, the members of the executive board of the city of Rochester, for the time being, and their successors in office, or the person or persons having charge or control of the fire department of said city of Rochester, and their successors in office, the city treasurer of the city of Rochester, for the time being, and his successors in office, and the chief engineer of the fire department of the city of Rochester, for the

time being, and his successors in office, shall constitute a board of trustees of the pension fund for the paid fire department of said city of Rochester hereinafter mentioned. The mayor of the city of Rochester shall be president of said board, and the said board of trustees shall annually designate one of their number who shall be secretary thereof. The city treasurer of the city of Rochester shall be treasurer of said pension fund. Such board of trustees shall have charge of and administer said fund, and, from time to time, invest the same or any part thereof, as they shall deem most beneficial to said fund, and are empowered to collect and receive said fund, to make all necessary contracts and take all necessary and proper action and proceedings in the premises, and to make payments from said fund of pensions granted in pursuance of this act. The said trustees shall, from time to time, establish such rules and regulations for said pension fund as they may deem best. They shall report, in detail, the condition of the fund at the close of each fiscal year of the fire department, through their secretary, to the common council, and said report shall be published with the annual report of the fire department of the said city. No payments whatever shall be allowed or made by said trustees as rewards, gratuities or compensation to any person for salary or for services rendered to or for said board of trustees.

§ 2. **Sources of pension fund**—The pension fund of the paid fire department of the city of Rochester shall consist of:

1. All fines imposed upon the members of the paid fire department of said city by the executive board thereof, or the person or persons having charge or control of the fire department of said city. (*As amended L.* 1896, *Ch.* 696).

2. All rewards in money, fees, gifts, testimonials and emoluments that may be paid or given for or on account of extraordinary services by the said paid fire department, or any member thereof, except such as have been or shall be allowed by the person or persons having charge or control of said department to be retained by said member or members. (*As amended L.* 1896, *Ch.* 696).

3. All moneys, pay, compensation or salary, or any part thereof, forfeited, deducted or withheld from any member or members of the fire department force, for or on account of absence or suspension from

duty, except in case of sickness, to be paid monthly to the treasurer of said relief fund; and the person, persons or board having charge or control of the fire department of said city of Rochester are authorized and empowered, in their discretion, to deduct and withhold pay, salary and compensation from any member or members of said department, for or on account of absence from duty, except when such absence shall be caused from sickness or disability, for which leave of absence shall have been granted in accordance with the rules of said department. (*As amended L.* 1896, *Ch.* 696).

4. All licenses or taxes collected and received for, and revenues derived from, licenses of theatres and public places of amusement in said city. (*As amended L.* 1896, *Ch.* 696).

5. All proceeds of suits for penalties for violations of the ordinances of the said city of Rochester relating to the management, conduct and control of or interference with the fire department thereof, and also relating to the erection and construction of wooden buildings in said city. (*As amended L.* 1896, *Ch.* 696).

6. All moneys which shall be deducted from the monthly pay of each fireman and officer of said department, from the monthly pension of the retired members of the said department, and from the pay of such other employees of said department as may be entitled to participate in said fund, and which shall be the sum of fifty cents each month from each of said persons. (*As amended L.* 1896, *Ch.* 696).

7. The common council shall annually include in the tax levy the sum of three thousand dollars, which sum shall, at the time when the appropriation for the conduct of the fire department shall be made, be set apart and paid over to the treasurer of the trustees of the pension fund for the paid fire department. (*As amended L.* 1896, *Ch.* 696).

§ 3. **Persons entitled to pensions.** It shall be the duty of the executive board to retire and dismiss from membership in the said paid fire department, and thereupon grant pensions, as hereinafter provided, to any member of the paid fire department force of said city who shall have become disabled, physically or mentally, or so advanced in age as to be unfit for fire duty, and to widows and orphans of such members, to be paid from the said pension fund by the board of trustees thereof, as follows:

1. To the widow of any member of the paid fire department who shall have been killed while in the actual performance of duty, or who shall have died from the effects of any injury received while in the actual discharge of such duty, or who has died or who shall hereafter die after twenty years service in the paid fire department of said city, or who shall have been retired upon a pension under section four of this act, if there be no child or children under eighteen years of age of any such members, three hundred dollars per annum: but if there be any such child or children of any such member under the age aforesaid, then the said sum may be divided between such widow, child or children in such proportion and in such manner as the said board may direct. (*As amended L.* 1896, *Ch.* 696).

2. To any child or children under eighteen years of age of such member killed or dying as aforesaid, or pensioner as aforesaid, but leaving no widow, or if a widow, then after her death, to such child or children being yet under eighteen years of age, three hundred dollars per annum. (*As amended L.* 1896, *Ch.* 696).

3. To any such member of said paid fire department who shall, after twenty years membership in the paid fire department, become superannuated by age, permanently insane, or incapacitated or disabled, physically or mentally, so as to be unfitted or unable to perform full fire duty by reason of such disability or disease, contracted without misconduct on his part, a sum not less than one-half the full salary or compensation of such member so retired, at the time of his retirement; provided, however, that no pension granted under the provisions of of this section shall exceed six hundred dollars per annum. (*As amended L.* 1896, *Ch.* 696).

§ 4. **Retirement by request.** Any member of the paid fire department force who has or shall have performed duty therein for a period of twenty years, or upwards, either as a paid or minute man, and any member of the paid fire department force, who, while in the actual performance of duty and by reason of the performance of such duty, and without fault or misconduct on his part, shall have become permanently disabled, physically or mentally, so as to be unfitted to perform full fire duty, upon his own application in writing, or upon a certificate of the surgeon of the fire department, showing that such member is permanently disabled, physically or mentally, so as to be

unfit for duty, shall, by resolution unanimously adopted by the board, person or persons having charge and control of the paid fire department of said city, be retired and dismissed from said force and service and placed on the roll of the pension fund of the paid fire department, and awarded and granted to be paid from said pension fund an annual pension, during his lifetime of a sum not less than one-half the full salary or compensation of such member so retired, at the time of his retirement; provided, however, that no pension granted under the provisions of this section shall exceed the sum of six hundred dollars per annum. Pensions granted under this section shall be for the natural life of the pensioner, and shall not be revoked, repealed or diminished. Pensions shall be continued and paid to the widows and children or, if no widow, to the child or children, while under the age of eighteen years, of any member or members of the paid fire department force to whom pensions shall have been granted under the provisions of this section or under subdivision three of section three of this act; provided, however, that such pensions to such widows or children, as the case may be, shall in no instance exceed six hundred dollars per annum. (*As amended L.* 1895, *Ch.* 857).

§ 5. **Pensions to widows**—Pensions to widows shall terminate when the widow shall remarry, and pensions to children shall terminate whenever the children shall, respectively, arrive at the age of eighteen years. (*As amended L.* 1895, *Ch.* 696).

§ 6. **Certificate of surgeon necessary**—No member of the paid fire department force shall be awarded, granted or paid a pension on account of physical or mental disability or disease, unless upon the certificate of the surgeon of the fire department, which shall set forth the cause, nature and extent of the disability, disease or injury of such member of the said paid fire department who may be placed upon the pension roll; and said certificate shall distinctly state whether or not such disability, disease or injury was incurred or sustained by said member of the paid fire department force in the performance of fire duty, and such certificate shall in each case be filed with and entered upon the minutes of the board, person or persons having charge and control of the fire department of said city.

§ 7. **Pro rata payments**—Should the moneys at the disposal of the trustees of the pension fund for said paid fire department be

found at any time inadequate to fully carry out the provisions of this act, the trustees shall pay to the dependents on such fund as near a pro rata amount as in their judgment the circumstances may warrant.

§ 8. **Fraudulent claims**—Every person who knowingly or wilfully in any wise procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pension or payment thereof, shall in every such case, forfeit a sum not exceeding two hundred and fifty dollars, to be sued for and recovered by and in the name of the said board of trustees of said pension fund, and when recovered, paid over to and thereupon become a part of said pension fund of the paid fire department of the city of Rochester.

§ 9. **Trustees may administer oaths**—For the purposes of this act, the persons constituting the board of trustees of the pension fund for the paid fire department of the city of Rochester, New York, are hereby authorized to administer oaths and take acknowledgments, and any person who shall willfully swear falsely in any oath or affirmation in obtaining or procuring any pension or payment thereof, under the provisions of this act, shall be guilty of perjury.

§ 10. **Pension money exempt from execution**—The moneys, securities and effects of the pension fund for the paid fire department of the city of Rochester, and all pensions granted and payable from said fund, shall be and are exempt from execution and from all process and proceedings to enjoin and recover the same by or on behalf of any creditor or person having or asserting any claim against, or debt or liability of any pensioner of said fund.

§ 11. **Laws repealed**—All acts or parts of acts inconsistent with or repugnant to the provisions of this act are hereby repealed.

§ 12. **When in effect**—This act shall take effect immediately.

AN ACT TO LEGALIZE AND CONFIRM CERTAIN APPOINTMENTS AND PROMOTIONS MADE IN THE FIRE DEPARTMENT OF THE CITY OF ROCHESTER. (L. 1896, CH. 570).

SECTION 1. **Fire department appointments legalized**—All appointments and promotions heretofore made in the fire department

of the city of Rochester from the competitive eligible list prepared by the civil service commission of said city are hereby legalized, ratified and confirmed.

§ 2. **Actions pending.** Nothing in this act contained shall affect any action or proceeding now pending.

§ 3. **When in effect.** This act shall take effect immediately.

AN ACT FOR THE RELIEF OF CERTAIN FIREMEN IN THE CITY OF ROCHESTER. (*L.* 1898, *Ch.* 571.)

Section 1. **Active hose certificates.** The mayor of the city of Rochester is hereby authorized and empowered to grant certificates of exemption to members of the late Active hose company of said city, who were duly enrolled and in good standing as said company on the fourteenth day of March, eighteen hundred and ninety-eight, in like manner and with the same effect as though they had served the full term of five years, without pay, as volunteer firemen.

§ 2. **When in effect.** This act shall take effect immediately.

See notes, this book, p. 143.

Act as to charges against Nathaniel P. Otis[illegible] L. 1901, Ch. 11.

GENESEE RIVER

AN ACT RELATING TO THE CITY OF ROCHESTER, AND AUTHORIZING COMMISSIONERS TO DEVISE AND REPORT MEASURES TO PREVENT INUNDATIONS IN THAT CITY FROM THE GENESEE RIVER. (*L.* 1865, *Ch.* 630.)

Section 1. **Appointment and duties of commissioners.** Addison Gardiner, Amon Bronson, George H. Mumford, Levi A. Ward and George J. Whitney, are hereby appointed commissioners to inquire into and ascertain the cause or causes of the inundation of the city of Rochester by the waters of the Genesee river in the month

of March, eighteen hundred and sixty-five, and whether any, and if any, what obstructions have been placed in said river which tended to cause or increase the extent of such inundation, and the nature and extent of such obstructions, and what measures, proceedings and remedies are necessary or proper for the purpose of guarding against or preventing a recurrence of such inundation, and that for this purpose the said commissioners are hereby empowered to make or cause to be made all necessary surveys, explorations and examinations by suitable engineers or otherwise, and to this end may enter upon any and all lands or buildings necessary to that purpose; and the said commissioners are also empowered to summon before them and take the testimony, under oath or affirmation, to be administered by any of said commissioners, of all or any witnesses that they shall see fit, and to require and compel the production of any papers, books or records, which they may deem pertinent thereto; and they may issue their summons or order in the nature of a subpœna, to be signed by them or any one of them, commanding and requiring the attendance of such witnesses and the production of such papers, which shall be served in the same manner as subpœnas in criminal cases, and disobedience to which shall, when reported by said commissioners to the supreme court, be punished as a contempt in like manner as disobedience to the process of subpœna when issued by said court.

§ 2. **Commissioners' oaths of office.** Said commissioners before entering upon their duties, shall take the usual oath of office, and file the same in the office of the secretary of state.

§ 3. **Commissioners' report.** Said commissioners shall transmit their report to the legislature at its next annual session, which report shall be accompanied by maps and drawings explanatory thereof, and a duplicate of such report, maps and drawings, shall be filed by said commissioners in the office of the clerk of the county of Monroe at least ten days before they transmit the same to the legislature.

§ 4. **Commissioners' expenses, how paid.** All expenses incurred by the said commissioners in prosecuting the inquiry hereby required to be made, shall be a charge upon the city of Rochester, and when certified to the common council of said city by said commissioners, shall be paid out of the treasury of said city, and for the

purpose of making such payment the said common council may borrow money upon the credit of said city, and shall include the amount of such expenses in the next annual assessment of taxes.

§ 5. **Majority when necessary**—A majority of said commissioners shall be necessary to make any determination, but any of them may take testimony to be reported by him to his associates.

§ 6. **Inability of commissioners**—In case of the inability or refusal of any of said commissioners to act, the duties hereby imposed shall devolve upon and be executed by the other commissioners.

§ 7. **Power of common council as to encroachments in Genesee river**—The common council of the city of Rochester are hereby authorized, and it is hereby made its duty to prevent the construction of any encroachment upon or obstruction in the bed of the Genesee river within the limits of said city, and for that purpose said common council may institute any actions or proceedings in the name of said city as plaintiff therein, and upon the granting of any injunction order, in any such action, an undertaking in the usual form in the name of and on behalf of said city as such plaintiff, executed by the mayor of said city in his official capacity, shall be sufficient, and no surety shall be required thereto.

§ 8. **When in effect**—This act shall take effect immediately.

Common council may prohibit absolutely encroachments in Genesee river—[illegible]

AN ACT AUTHORIZING THE SUPERINTENDENT OF PUBLIC WORKS TO MAINTAIN THAT PORTION OF THE GENESEE RIVER FLOWING THROUGH WITHIN THE LIMITS OF THE CITY OF ROCHESTER, IN SUCH CONDITION THAT IT SHALL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH. [L. 1880, Ch. 359]

The legislature has declared certain portions of the Genesee river to be a public highway—[illegible]

[illegible] waters therein mentioned a public highway" declares that "so much of the Genesee river from the confluence of the Caneseraga creek up to the bridge near the house of Philip Church, Esquire, in the town of Angelica, in the county of Allegany, except from the foot of the falls to the head of the rapids in the town of Nunda, and so much of said river as is included from the Pennsylvania line, down to Philipsburgh Mills in the said town of Angelica, be and is hereby declared a public highway;" L. 1828, Ch. 250, "An act declaring a part of the Genesee river a public highway" (passed April 18th, 1828, 50th session) reads as follows: "All that part of the Genesee river from the village of Rochester to the Pennsylvania line, not heretofore declared to be a public highway, shall, from and after the passage of this act, be, and the same is hereby declared a public highway; but this act shall not be so construed as to affect any mills or dams already erected on that portion of said river, which is, by this act declared to be a public highway."

MEMORIAL DAY

AN ACT TO PROVIDE FOR THE PROPER OBSERVANCE OF MEMORIAL DAY IN THE CITY OF ROCHESTER, AND TO AUTHORIZE THE COMMON COUNCIL OF SAID CITY TO MAKE AN ANNUAL APPROPRIATION FOR THAT PURPOSE. L. 1897, Ch. 424.

Section 1. **Five hundred dollars may be appropriated**—The common council of the city of Rochester is hereby authorized in its discretion, and with the consent of the mayor, to raise annually, and in the same manner as moneys for city purposes are raised, a sum not to exceed five hundred dollars in any one year, and to expend the same in meeting the expense of a proper observance of Memorial day, and in the decoration of the graves of the dead soldiers, sailors and marines, buried in the cemeteries of said city and its suburbs.

§ 2. **Money how spent**—Said moneys shall be expended under the direction of the various veteran organizations of said city, and shall be paid by the city treasurer, upon the warrant of the city clerk, after the items thereof shall have been audited by the city auditor and approved by the common council.

§ 3. **When in effect**—This act shall take effect immediately.

AN ACT TO ENABLE SOLDIERS TO PARTICIPATE IN THE EXERCISES OF MEMORIAL DAY. L. 1865, Ch. 210.

Section 1. **Veterans to have leave of absence**—It shall be the duty of the head of every public department and of every court of the state of New York, of every superintendent or foreman on the

public works of said state, of the county officers of the several counties of said state, and of the head of every department, bureau and office in the government of the various cities and villages in this state, to give leave of absence with pay for the twenty four hours of the thirtieth day of May, or such other day as may, according to law, be observed as Memorial day, to every person in the service of the state, the county, the city or village, as the case may be, who served in the army or the navy of the United States in the war of the rebellion and who was honorably discharged from such service. A refusal to give such leave of absence to one entitled thereto shall be neglect of duty. (*As amended L.* 1901, *Ch.* 261).

§ 2. **Laws repealed**—All laws or parts of laws, special or general, so far as inconsistent with this act, are hereby repealed. (*As amended, L.* 1901, *Ch.* 261).

§ 3. **When in effect**—This act shall take effect immediately.

MIDWIFERY

AN ACT REGULATING AND RESTRAINING THE PRACTICE OF MIDWIFERY IN THE CITY OF ROCHESTER, BY OTHER THAN LEGALLY AUTHORIZED PHYSICIANS. (*L.* 1895, *Ch.* 842).

Section 1. **Examiners in midwifery**—On or before the first day of July, eighteen hundred and ninety five, the mayor of the city of Rochester shall appoint a board of examiners in midwifery to consist of three members, two of whom shall be legally qualified physicians and surgeons of at least five years practice, who together with the health officer of said city (ex officio) shall constitute such board, and thereafter as often as any vacancy shall occur in said board, said mayor shall fill such vacancy. The members of such board other than the health officer shall receive as compensation for their services the sum of ten dollars each for each day necessarily given to the performance of their duties. Such compensation shall be paid by the city treasurer of said city out of such general fund of said city as may be set apart for the contingent expenses of said city and shall be paid

on an order of the common council of said city, after due proof of such services has been rendered. The terms of office of the members of such board other than the health officer shall be for three years each.

§ 2. **Officers of board of examiners**. Immediately after such appointment said board shall organize by the selection of one of its members as president, and of another as secretary and treasurer, who shall hold their offices for one year and be thereafter elected annually, and shall adopt and have power to adopt and enforce such rules and regulations as are necessary to carry out the purposes and provisions of this act.

§ 3. **Examinations and certificates**—Such examiners shall meet on the first Tuesday of April and October in each year, and on such other days as such board may appoint, after due notice thereof is publicly given, in the city of Rochester, and shall then examine all candidates of the age of twenty-one years and upwards, who shall present themselves to be examined, as to their moral character and qualifications to practice midwifery, and shall on receipt of ten dollars, issue their certificate to any person so examined, who shall be found by them to be qualified, which certificate shall set forth that said board has found the person to whom it is issued qualified to practice midwifery in the city of Rochester, and such certificate shall be recorded by the clerk of the said city of Rochester in a book to be kept for that purpose. All moneys going into the treasury of this board shall be turned over to the city treasurer of said city and by him credited to the contingent fund of said city.

§ 4. **Powers of a midwife**—Any person who has received and recorded such certificate shall thereupon be designated a midwife, and authorized and entitled within the city of Rochester to practice midwifery in cases of normal labor, and in no others; but such persons shall not in any cases of labor, use instruments of any kind, nor assist labor by any artificial, forcible, or mechanical means, nor perform version nor attempt to remove adherent placentæ, nor administer, prescribe, advise, or employ any poisonous or dangerous drug, herb or medicine, nor attempt the treatment of disease except where the attendance of a physician can not be speedily procured, and in such cases, such persons shall at once and in the most speedy way procure the attendance of a physician.

§ 5. **Revoking certificates** Said board of examiners shall have power, on proper cause being shown, and after giving a hearing to the person holding their certificate, to recommend to the mayor of the city of Rochester the revoking of the same, and said mayor shall have power to revoke such certificate and license.

§ 6. **Penalties** Any person who shall practice, or without the attendance of a physician where one can be procured, attend a case of obstetrics within the city of Rochester, after the thirty-first day of December, eighteen hundred and ninety five, without being duly authorized so to do under existing laws of this state, or without having received and recorded the certificate provided for by this act, and any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than fifty dollars nor more than one hundred dollars, and shall forfeit any certificate therefor granted under the provisions of this act.

§ 7. **When in effect** This act shall take effect immediately.

MONROE COUNTY PENITENTIARY

An Act to provide for the maintenance of prisoners sent to the Monroe county penitentiary from the several towns and the city of Rochester in the county of Monroe. (*L.* 1874, *Ch.* 463.)

Section 1. **Defraying expenses of arrest, trial and conviction of prisoners** All expenses incurred by the city of Rochester or any of the towns in the county of Monroe, for the arrest, trial and conviction of any prisoner, by any police justice or justice of the peace in said county, including the board and clothing of said prisoner while under sentence at the Monroe county penitentiary, shall be borne and paid by the town or city where such trial and conviction shall be had.

§ 2. **Disposition of fines** All fines imposed and received by any magistrate or police justice in the county of Monroe, and all fines received by the superintendent of the Monroe county penitentiary, shall belong to the poor fund, and shall be used for the support

of the poor in such town or city respectively, where such trial and conviction shall be had; except that all fines imposed by the police justices of the city of Rochester shall, when collected, be paid to the treasurer of said city, and by him credited to the police fund; and except that all fines imposed by the police justice or magistrate of the village of Honeoye Falls shall, when collected, be paid to the treasurer of said village, and by him credited to the general fund of said village. (*Amended L.* 1879, *Ch.* 448; *L.* 1881, *Ch.* 291.)

§ 3. **Duty of superintendent of Monroe county penitentiary**—The superintendent of the Monroe county penitentiary shall, as soon as this act shall take effect, cause proper books of account to be opened with the city of Rochester, and the several towns in said county of Monroe, in which shall be entered the name and residence of all persons convicted and sent to the said penitentiary from said county, and all expenses for said prisoner while under sentence at said penitentiary shall be charged to the city of Rochester or the town from which such person shall be sent.

§ 4. **Report of superintendent; assessment of deficiency**—The superintendent of said penitentiary shall report annually to the board of supervisors of said county, and within ten days from the first day's session of said board, and shall present a detailed statement to said board, giving the name of each person confined in said penitentiary, and the period of the confinement, showing the indebtedness to said penitentiary of the city of Rochester and the several towns in the county separately, and the balance due from such city or town respectively; and the board of supervisors of said county shall assess such balance on the taxable property of the city of Rochester or the towns from which such balance shall be due as will be sufficient to pay all such indebtedness to said penitentiary.

§ 5. **Payment of assessment**—The amount so assessed on the city, and the several towns in the county, shall, when collected, be paid to the county treasurer and credited to the penitentiary fund.

§ 6. **Acts repealed**—All acts and parts of acts heretofore passed inconsistent with the provisions of this act are to that extent hereby repealed.

§ 7. **When in effect**—This act shall take effect on the first day of March next.

An Act in relation to the Monroe County Workhouse. (*L.* 1858, *Ch.* 188).

Section 1. **Name.** The name of the workhouse of the county of Monroe, as designated in the act chapter two hundred and seventy-nine, of the laws of the year eighteen hundred and fifty-three, is hereby changed to "The Monroe County Penitentiary," by which name it shall hereafter be known and designated, and all acts and parts of acts passed by the legislature of this state, and all acts of the board of supervisors of Monroe county, or of any other county in this state, or of the inspectors or superintendent or other officers thereof, and all sentences or other acts of any of the courts of this state, referring or applicable to the said workhouse of the county of Monroe, shall apply to "The Monroe County Penitentiary," and to the prisoners, officers, and inspectors thereof, so far as the "name shall be applicable.

§ 2. **Who shall be committed.** Whenever any person shall be convicted, in the county of Monroe, of any offense punishable by imprisonment in the county jail, or by such imprisonment and a fine, or shall be sentenced by any court of competent authority in said county, for any offense, to pay a fine and to be committed until such fine is paid, such person shall be committed to the Monroe county penitentiary, instead of the county jail, and may be so sentenced by the court before whom such person shall be tried, and shall be received into said penitentiary, and be there kept and employed at labor in the same manner as other convicts in said penitentiary, and shall be in like manner subject to the rules and discipline of said penitentiary.

§ 3. **For what offences persons may be committed.** In all cases arising in the county of Monroe, where any person shall be convicted before any court or magistrate of said county, or of the city of Rochester, of the offense of drunkenness, vagrancy, or disorderly conduct, or shall be required to give security to keep the peace, or for good behavior, if such security shall not be given to the satisfaction of such court or magistrate, such person may be committed or sentenced as the case

*So in the original.

may require, by such court or officer, to imprisonment at labor, in the Monroe county penitentiary, for a term not exceeding three months, in the discretion of such court or magistrate. All persons so sentenced or ordered to be committed, shall be received into said penitentiary, and be employed at labor therein, and be subject to the rules and discipline thereof, until discharged according to law.

§ 4. **When in effect**— This act shall take effect immediately.

NOTE—See Old Charter, § 264, this book, p. 274.

PARKS

AN ACT TO PROVIDE FOR THE IMPROVEMENT AND CARE OF PRIVATE PARKS IN THE CITY OF ROCHESTER IN THIS STATE. (*L.* 1880, *Ch.* 96).

Section 1. **Common council to levy annual taxes for private parks**—The common council of the city of Rochester, of this state, shall annually, upon the written application of the owners of more than one half of the number of lineal feet front of all the land on any private park in said city, levy a tax upon all such land for the purpose of defraying the expenses of making the repairs and improvements of such park, not exceeding in any one year one dollar per lineal foot front of all land on such park. The tax shall be apportioned equally upon all the lands so on such park, and shall be collected at the same time, and in the same manner, as the general city tax in said city. The amount of such tax, when collected, shall be paid by the city treasurer of said city to the person assigned in the application to receive it. (*Amended L.* 1888, *Ch.* 198; *L.* 1889, *Ch.* 410).

§ 2. **When in effect**— This act shall take effect immediately.

AN ACT TO AUTHORIZE THE SELECTION, LOCATION AND ACQUIRING OF CERTAIN GROUNDS FOR PUBLIC PARKS AND PARK-WAYS IN AND NEAR THE CITY OF ROCHESTER, AND TO PROVIDE FOR THE MAINTENANCE AND EMBELLISHMENT THEREOF. (*L.* 1888, *Ch.* 193).

Section 1. **Commissioners; term of office and vacancies**—William C. Barry, Henry Bartholomay, James H. Brown, John Ewing Durand, George W. Elliott, James S. Graham, Halbert S. Greenleaf,

John Greenwood, James W. Gillis, Henry E. Huntington, Joseph Cauffman, William S. Kimball, Mathias Kondolf, Bernard J. McQuaid, Edward M. Moore, George N. Newell, Daniel W. Powers, Mortimer F. Reynolds, Hiram W. Sibley, William Lee, and Alfred Wright, are hereby appointed commissioners of the parks, park-ways and approaches thereof which may be created pursuant to the provisions of this act, with the name and style of park commissioners. The said park commissioners shall hold office for the term of five years from the first day of May, eighteen hundred and eighty-eight, and until others are appointed in their places. In case any of the persons above named shall not undertake the office of this commission, or in case of a vacancy in said board occasioned by expiration of terms of office or otherwise, such vacancy shall be filled by the mayor of the city of Rochester by and with the advice and consent of not less than two-thirds of all the members of the common council of said city, and the person so appointed shall hold his office for the term of five years from the date of his appointment, and until another shall be appointed in his place, except that when a person is appointed to a vacancy occurring before the term of office in which the vacancy occurs shall have been completed, such person so appointed shall hold his office for the remainder of said term of five years not completed by his predecessor, and until another shall be appointed in his place. No member of said board shall receive any compensation for his services; but each commissioner shall receive his actual disbursements or expenses in visiting and superintending said parks, when done by the direction of the board of park commissioners. (*Amended L.* 1890, *Ch.* 344; *L.* 1897, *Ch.* 436; *L.* 1902, *Ch.* 530).

§ 2. **Officers**—Every commissioner shall, before entering upon the duties of his office, take and subscribe the oath prescribed by the constitution of the state, which oath shall be filed in the office of the clerk of Monroe county. The said park commissioners shall hold their first meeting on the first Monday of May, one thousand eight hundred and eighty-eight, at twelve o'clock noon, at the mayor's office in said city; and shall, at said meeting, elect by ballot a president, vice-president, secretary, and a treasurer of said board who shall, except the secretary, be members thereof.

§ 3. **Powers**—The said park commissioners shall have power to select and locate such grounds in and near the city of Rochester,

as may, in their opinion, be proper and desirable to be reserved, set apart or acquired for one or more public parks and park-ways between such public parks and approaches thereto, and streets connecting the said parks; and for this purpose may take any part or parts of existing streets and change the lines thereof. The said park commissioners shall make such selection and location in view of the present condition, future growth and wants of said city as they shall deem best with a view to the general convenience and advantage of residents in every portion of said city. Within ten days after organization, as in the last section provided, the said park commissioners shall proceed to have surveys and plans made, and, as soon as practicable thereafter, enter into agreements of purchase, in the name of the city of Rochester, of lands within the location and boundaries by them fixed for said park, parks, park-ways, streets and approaches, for which owners will make contracts of sale, and the same shall be paid for out of the park improvement fund, hereinafter provided, from the sale of Rochester park bonds. They shall report, in detail, such selection and location of lands purchased, to the common council of said city of Rochester, on or before the first day of January, eighteen hundred and eighty-nine, and, from time to time thereafter, when requested by the common council. In said reports the said park commissioners shall state the boundaries of the grounds located by them for the park or parks, park-ways, approaches and streets by them laid out; also, the name or names of said park or parks, park-ways, approaches and streets, and the portions thereof then acquired by gift or purchase. And the tracts, pieces and parcels of land which may be described in the said report, are hereby declared to be public places; and shall be deemed to have been taken and acquired by said city of Rochester for public use, as and for a public park or parks, park-ways, public streets connecting the same, and approaches thereto. All parts of streets, avenues and highways now laid out as running through said lands are hereby closed and discontinued, so far as the same would run through or intersect any of said lands, except park-ways and streets connecting parks. The said park commissioners, for the purpose of performing the duties imposed upon them by this section, shall have power to employ a surveyor and necessary assistants, at a yearly expense not exceeding five thousand dollars, and the same, when certified by said park commissioners, shall be a charge upon the city of Rochester, and shall be paid out of the moneys hereby authorized to be raised for the

purposes of this act. Before any proceedings shall be had or taken for acquiring the title to any real estate, except by gift, or for a nominal consideration, or by agreement of purchase, as herein provided, the said commissioners shall cause to be made a map of the land which they shall determine to take for such park or parks, park-ways, streets connecting the same, and approaches thereto, which shall be certified by the president and said surveyor, or a majority of the commissioners and the surveyor, and filed in the office of the clerk of Monroe county, and a copy thereof filed in the office of the clerk of the city of Rochester. (*As amended L.* 1890, *Ch.* 344).

Application to acquire land—In re application of city to acquire land for park purposes, 8 App. Div. 609.

§ 4. **Official notices**—Upon filing the map and copy mentioned in the foregoing section, the common council of said city shall, at the next regular meeting of the common council thereafter, by resolution declare that the said city intends to take the pieces or tracts of land described in the said map for a public park and shall give notice of such intention by publishing the same in the official paper of the city for twenty successive week days.

Common council must act at next regular meeting—In re application City of Rochester to acquire lands of John W. Warrant for park purposes, 31 St. Rep. 75.

Publication of resolution sufficient notice to owners—In re application City of Rochester, etc., 137 N. Y. 243.

§ 5. **Condemnation proceedings**—At the next regular meeting of the common council after the expiration of the said publication, the said common council shall, by resolution, declare that the city of Rochester has determined to take and appropriate the said pieces or tracts of land for the purposes aforesaid; and they shall give notice of such determination by publishing the same in the official paper of the city for ten successive week days and that the said city of Rochester will, on some day to be named in said notice, apply to the supreme court of the state of New York, in the judicial district in which the city of Rochester is, for the appointment of three disinterested commissioners to ascertain and report the just compensation to be paid to the person or persons or corporation or corporations owning or having an interest in said pieces or tracts of land.

§ 6. **Supreme court appoints commissioners** On the opening of such court on the day designated in the notice mentioned in the next preceding section, or as soon thereafter as he can be heard, the city attorney of said city, on behalf thereof, shall, upon a copy of said resolutions certified by the city clerk, and upon proof of the due publication of said notices, apply to said court to appoint such commissioners. Such court shall hear such application and shall appoint three commissioners for the purposes aforesaid. If any commissioner, so appointed shall die, be disqualified or decline to serve, the said court may, upon application of the said city attorney, upon like notice, appoint another in his place. Each of said commissioners, from the park fund herein provided shall be paid ten dollars for each day employed as such commissioners.

Qualifications of commissioners In re application City of Rochester, etc., 31 St. Rep. 75.

§ 7. **Further official notice** The three commissioners so appointed, shall, before they enter upon their duties, take and subscribe an oath to be administered by some person authorized to administer oaths, faithfully to execute their duty according to the best of their ability. They shall give notice of the time and place of their meeting to view the said piece or tract of land, and to take evidence as to the compensation which should be paid therefor, by publishing the same in the official paper for five successive week days.

§ 8. **Awards and report** The said three commissioners shall together view such property and receive any legal evidence as to the compensation which should be made therefor, or for any part thereof, and may adjourn from time to time. They shall ascertain and award to the respective owners of the land and property to be taken and to all persons and corporations interested therein, such compensation therefor as in their opinion shall be just and proper. The report of such commissioners, signed by all or by a majority of them, shall be filed in the office of the clerk of Monroe county, as soon as completed; and the said report shall be made and filed within one month from the time of the appointment of such commissioners, unless the time shall be further extended by the court on application of said city attorney.

Damages to adjacent property arising out of taking park lands—Baker vs. City of Rochester, 24 App. Div. 383.

§ 9. **Common council to confirm the report**—After the report of the said commissioners shall be so filed the said common council shall give notice, by publishing the same in ten successive numbers of the official paper of the city, that they will, on a day to be specified in said notice, apply to the said supreme court of the state of New York for an order confirming the report; and on the day so appointed, the said court, upon proof of the due publication of said notice, as in this section provided, shall confirm such report, and shall make an order of confirmation containing a recital of the substance of the proceedings in the matter of the appraisal and a description of the real estate appraised for which compensation is to be made; and shall also direct to whom the money is to be paid, or in what bank or in what manner it is to be deposited.

§ 10. **Record of the order**—A certified copy of the order so to be made as aforesaid shall be recorded at full length in the office of the clerk of the county of Monroe; and thereupon and on payment or deposit of the sums to be paid as compensation for the lands so taken, as directed by the said order, the fee of the said lands shall vest in the said city of Rochester for the uses and purposes named in this act, and the same shall be held by said city for such uses and purposes forever. And the said the park commissioners shall be entitled to enter upon, take possession of,and forever use the said lands for the purposes of a public park; and the same shall thenceforth be, for all pursoses whatever, part of the park or parks of said city under the jurisdiction and control of the said the park commissioners.

§ 11. **Conflicting claimants**—If there shall be adverse and conflicting claimants of the money, or any part of it, to be paid as compensation for the real estate taken for the purposes aforesaid, the court may direct the moneys to be paid into court by the city, and determine who is entitled to the same, and direct to whom the same shall be paid; and may, in its discretion, order a reference to ascertain the facts on which such determination and order are to be made.

§ 12. **To amend defects**—The said court shall have power at any time to amend any defect or informality in any of the proceedings to acquire title to the said land, as may be necessary.

§ 13. **Perfecting title**—If, at any time after an attempt to acquire title by appraisal as aforesaid, it shall be found that the title thereby attempted to be acquired is defective, the city of Rochester shall proceed anew to acquire or perfect such title in the same manner as if no appraisal had been made; and at any stage of the proceedings, after the confirmation of the report of the said commissioners, the said court may authorize the said the park commissioners, if in possession, to continue in such possession, and if not in possession, to take possession and use such real estate during the pendency and until the final conclusion of such new proceedings and may stay all actions or proceedings against the park commissioners, or against the city of Rochester, on account thereof, upon the city of Rochester paying into court a sufficient sum, or giving such security as the court may direct, to pay the compensation therefor, when finally ascertained.

§ 14. **Covenants discharged**—In all cases where any real estate subject to any lease or other agreement shall be taken under the proceedings authorized by this act, all the covenants and stipulations contained in such lease or agreement shall, upon the final confirmation of the report of said commissioners, cease, determine and be discharged; and in all cases when a part only of any real estate shall be so taken, the said covenant and stipulation shall be so discharged only as to the part so taken, and the supreme court of the state of New York may, on the application of any party in interest to such lease or agreement, and after a notice in writing of eight days upon the other parties interested, appoint three disinterested freeholders of the city, residents therein, to determine the rents, payments and conditions which shall thereafter be paid and performed under such lease or agreement, in respect to the residue of such real estate; and the report of the said freeholders, on being confirmed by the court, shall be binding and conclusive on all persons interested in such real estate.

§ 15. **Rochester park bonds**—For the purpose of paying for the lands which may be taken or purchased under the provisions of this act, and for the purpose of laying out, improving or embellishing the park or parks, park-ways, approaches thereto, and connecting streets created under the provisions of this act, and the expenses of acquiring title thereto under the

provisions of this act, the bonds of the city of Rochester, to such an amount, not exceeding three hundred and sixty thousand dollars, as shall be necessary, shall be issued by the treasurer of said city, from time to time, as the same shall be required for the purposes aforesaid. Said bonds shall be known as the "Rochester Park Bonds," and shall be signed by the mayor and treasurer, and the seal of the city of Rochester affixed thereto; shall be countersigned by the president of said board of park commissioners, and shall be payable in not less than ten nor more than forty years from the date thereof; shall bear interest at a rate not exceeding four per centum per annum, interest and principal payable in the city of New York; interest payable half yearly on the first day of January and July in each year; and said bonds shall be payable at the option of said city after ten years from the issue. And the proceeds of the sale of said bonds shall constitute the funds for paying the cost of the lands taken under the provisions of this act, and the expenses of acquiring title thereto, and for the laying out, improvement and embellishment thereof. And the treasurer of said city shall pay, on the order of said park commissioners, the sums which may be awarded as above provided to the owner or owners or persons in any way interested in the lands which shall be taken pursuant to the provisions of this act, and the purchase price of lands obtained by agreement of purchase by said park commissioners. And as the said bonds are from time to time issued, the treasurer shall cause to be kept in his office, in a book to be provided for that purpose, a true and correct statement and an account of each and every bond issued under the provisions of this act, showing the number of each bond and the date and the amount thereof, and the time when due; and such books shall be open for public inspection, and shall be delivered to his successor in office. (*As amended, L.* 1895, *Ch.* 958).

This act shall not be construed to authorize the bonds of said city to be issued to an amount exceeding sixty thousand dollars in addition to the bonds already issued for park purposes in pursuance of the act above referred to, and the proceeds of the additional bonds authorized under the provisions of this act shall be used only in the purchase of such lands and interest therein for park purposes as the common council of said city may approve. (*L.* 1895, *Ch.* 958, § 2).

§ 16. **How bonds may be issued**—The bonds of the city of Rochester which shall be issued by virtue of this act, bearing a rate of interest not greater than four per centum per annum, shall be sold by the city treasurer at public sale to the highest bidder, after ten days notice published in such newspaper as the said park commissioners shall designate, but at not less than par. And the proceeds of such sale, including the premium if any be received therefor, shall be paid to the treasurer of said city, and said treasurer shall, with the concurrence of the mayor of said city, on the request of a majority of said park commissioners by resolution adopted at any regular meeting thereof, pledge any of said bonds for money borrowed temporarily and for the purposes of this act, at a rate of interest not exceeding four per centum per annum.

§ 17. **Park lands security for the bonds**—The lands hereby authorized to be taken by said city for a public park or park-ways, approaches thereto, and streets connecting the same, are hereby pledged for the payment of the bonds which may be issued by virtue of this act.

§ 18. **Redemption of bonds**—In order to provide for the payment of the interest and principal of the bonds hereby authorized to be issued by said city, there shall be added to the general city tax of the city of Rochester at large, in the year when the first issue of bonds hereby authorized shall be made, and each year thereafter, such sum of money in each of said years as shall be required to pay the interest upon the bonds which shall have been issued pursuant to the provisions of this act, and also a sum of money equal to one per centum upon the whole amount of the bonds issued pursuant to this act. And such sums of money as may be raised by taxation pursuant to this act, shall be applied, first, to the payment of the interest upon the bonds issued pursuant to the provisions of this act, and such sums of money raised as aforesaid, as may remain after the payment of said interest shall be held by the treasurer of said city, and shall be used by said treasurer in the redemption and payment of any of said bonds which may be presented for payment, even though the same may not be due. It shall be the duty of the treasurer of said city to estimate and ascertain the amounts required

to be added to the general city tax of said city of Rochester by virtue of this act, and to transmit a statement each year to the common council of said city, in time to have such amount included in the general tax of said city for that year; and it shall be the duty of said common council to cause such amount to be included in such general tax. And said common council shall annually provide by tax for the payment of the principal and interest of the bonds issued pursuant to the provisions of this act.

§ 19. **Rules, etc., of board**—A majority of the board of said park commissioners shall constitute a quorum for the transaction of business. The said board shall have the full and exclusive control to make rules and by-laws for the orderly transaction of their business; to govern, manage, direct, lay out and regulate the said park or parks, park-ways, the approaches thereto and the streets connecting the same; to appoint such engineers, clerks and other officers, excepting police, as may be necessary; to prescribe and define their respective duties, and to fix the amount of their compensation and generally, in regard to the said park or parks, park-ways, the approaches thereto and the streets connecting the same, they shall possess all the power and authority now by law conferred on, or possessed by the common council of said city, in respect to the public places in said city. (*Amended L.* 1890, *Ch.* 344; *L.* 1900, *Ch.* 484).

§ 20. **Commissioners cannot be interested**—It shall be a misdemeanor for any commissioner to be directly or indirectly in any way pecuniarily interested in any contract or work of any kind whatever connected with said park or parks, park-ways, approaches thereto or streets connecting the same; and it shall be the duty of any commissioner or other person who may have knowledge or information of the violation of this provision, forthwith to report the same to the mayor of the city of Rochester who shall present the facts of the case to the supreme court of the state of New York. The said court shall hear in a summary manner such commissioner in relation thereto, and any evidence he may offer; and if, after such hearing, the said court shall be satisfied of the truth of the said charge, the justice holding the same shall, by an order of said court, to be made at chambers or in term, immediately remove the said commissioner.

§ 21. **Annual reports**—The said park commissioners shall, in the month of March in each year, make to the common council of said city a full report of their proceedings and a detailed statement of all their receipts and expenditures.

§ 22. **Powers of the commissioners**—Whenever the city of Rochester shall have become vested with the titles of the lands taken pursuant to this act, it shall be lawful for the said park commissioners to let from year to year any buildings and the grounds attached thereto which may be within the bounds of the lands so taken, until the same shall be required for the laying out, regulation and improvement of the land so taken; and the said the park commissioners may sell any buildings, improvements and other materials within the boundaries of the lands so taken and belonging to said city, which, in their judgment, shall not be required for the purposes of the said park or parks, park-ways, approaches thereto and streets connecting the same; and the proceeds of such leases and sales shall be deposited with the treasurer of said city, to the credit of the said the park commissioners, and used by them for the improvement of the said park or parks, park-ways, approaches thereto and streets connecting the same.

§ 23. **Railways, hacks and refreshment stands**—The said the park commissioners shall have the power, upon such terms, or upon the payment of such yearly license fee or per capita tax as the park commissioners may prescribe, to grant to any street railway company in said city the privilege of laying down and operating a railway for the carriage of passengers only, through the said connecting streets and approaches; and shall have the power upon like terms to grant to any street railway company in said city, the privilege of laying down and operating a railway upon the surface of the ground in said parks, for the carriage of passengers only; and every grant or consent heretofore given by the said park commissioners to any street railway company in said city, to lay down and operate a railway for the carriage of passengers only, upon the surface of the ground in said parks, which grant or consent has been followed by the construction and operation of such railway, are, and each of said consents is hereby validated, approved and ratified with the same force and effect as if such consents and each of them had

been given after the passage of this act; but no street railway or other railway, or wagon or carriage except for carrying passengers, nor any line of telephone or telegraph poles shall enter upon, in or through the said park or parks except with the consent of said commissioners. The said park commissioners shall have power to license hacks for use in said park or parks, to let from year to year, or for any term not exceeding three years, the right to sell refreshments within the said park or parks, under such regulations as the said the park commissioners shall prescribe. Any and all sums of money which may be received by the said the park commissioners, pursuant to this section, shall be devoted to the improvement of the said park or parks, park-ways, approaches thereto, or streets connecting the same; but all such money shall be deposited each month with the city treasurer, and by him be placed to the credit of the park improvement fund, as an addition thereto. (*As amended L.* 1913, *Ch.* 607).

§ 24. **Care of public parks and squares; planting and care of trees.** Said park commissioners shall also have the care, maintenance and control of all the public parks and public squares within the city of Rochester. Said park commissioners shall have power, by contract or otherwise, to plant trees in the public streets, parks, squares, avenues and alleys of said city and to cause the expense thereof, with the expense of the care of such trees for three years after such planting, to be assessed upon the lots and parcels of land which they may deem benefited thereby. Whenever said park commissioners shall determine to plant such trees they shall adopt a resolution specifying the improvement, the estimated expense and the territory to be assessed. They shall then cause to be published in one of the newspapers of said city a notice stating when and where they will take further action with reference to said improvement. At the time and place given, or such other time or times to which postponements may be had, after hearing all persons appearing, they shall, by resolution, direct the amount to be assessed against each lot or parcel of land, and their assessment shall be deemed to include all lots or parcels of land benefited. On or before the first day of February of each year they shall cause to be delivered to the city assessors a certified copy of all such resolutions, not previously certified, and in the preparation of the assessment rolls for general city taxes for that year, said assessors shall insert against each lot or parcel of land the

amount so certified. Such assessments shall be collected and the payment thereof enforced with, and in like manner as, the general city taxes, in said city and when paid shall be placed by the city treasurer to the credit of the improvement on account of which they were collected. Said park commissioners shall also have power to cause any of the trees in the public streets, parks, squares, avenues and alleys of said city to be removed, pruned and trimmed when owned by the city and whenever required for a necessary public improvement, and in any other case, with the consent of the owner of such trees, or after making compensation, to be agreed upon or determined by proceedings taken under the condemnation law. The compensation allowed and expenses of such proceedings may be paid out of the funds of said park commissioners or assessed and collected as hereinbefore provided in the case of the planting of trees. Said park commissioners shall also have the power to pass ordinances to protect and preserve all trees in the public streets, parks, squares, avenues and alleys of said city and to regulate and prohibit the planting of such trees, a violation of which ordinances shall be a misdemeanor and shall subject the offender on conviction to a fine of not exceeding one hundred dollars or to imprisonment not exceeding thirty days, or both in the discretion of the court. No officer, contractor, or agent of said city shall hereafter interfere in any way with trees in the public streets, parks, squares, avenues and alleys of said city without first procuring a written consent from said park commissioners or such officer or committee as may be designated by them. (*Amended L.* 1894, *Ch.* 393; *L.* 1895, *Ch.* 708; *L.* 1896, *Ch.* 511; *L.* 1897, *Ch.* 745; *L.* 1903, *Ch.* 58).

Park board cannot remove trees arbitrarily—Ellison vs. Allen, — N. Y. Supp. 111.

§ 25. **Appropriation for repairs and improvements**—The board of estimate and apportionment of said city shall every year estimate and the common council shall appropriate for the said park commissioners, such sum of money as they shall require, and as to said boards shall appear reasonable and just, for the government, maintenance, extension and improvement of said park or parks, parkways, approaches thereto and streets connecting the same, and for keeping in repair the improvements and structures therein, and for

providing a suitable office for said commissioners, for the maintenance of small parks in said city and care of shade trees in said small parks and the streets, avenues and alleys of said city. The sum of money appropriated pursuant to this section shall be raised in the annual levy of taxes. (*Amended L.* 1890, *Ch.* 344; *L.* 1895, *Ch.* 708; *L.* 1900, *Ch.* 484; *L.* 1903, *Ch.* 581.

§ 26. **Treasurer's receipts and payments.** The money raised by the sale of the bonds issued pursuant to the provisions of this act shall be deposited as fast as the same shall be realized with the treasurer of the city of Rochester, who shall keep a separate account of all moneys received by him for the laying out and improvement of the park or parks, park-ways, approaches thereto, and streets connecting the same, to be known as the "park improvement fund." He shall hold all such moneys on account of and for the purposes of said improvements, and the expenses herein authorized, and shall pay them out as provided in this act, and not otherwise. The said park commissioners shall draw their drafts upon the said treasurer, signed by their president and secretary, for all claims, charges and expenses, authorized and incurred by the commission in laying out and improving of said park or parks, park-ways, approaches thereto, and streets connecting the same, specifying in such drafts the purpose for which they are drawn, and the treasurer shall pay the same out of the improvement moneys, upon the presentation of said drafts. The moneys voted by the common council pursuant to section twenty five of this act, shall be deposited with the treasurer of said city, who shall keep a separate account of all such moneys, and the same shall be known as the "park maintenance fund," which may be used for any park purposes except that of purchasing land; and he shall pay them out upon the drafts of said park commissioners issued in the form and manner prescribed by this section, and not otherwise; and the said treasurer shall pay the said drafts out of the said "park maintenance fund," upon the presentation of said drafts. (*As amended L.* 1890, *Ch.* 344).

§ 27. **Prohibition against debt, etc.** None of the said park commissioners, nor any person, whether in the employ of said commissioners or otherwise, shall have the power to create any debt,

obligation, claim or liability, for or on account of the said the park commissioners, except with the express authority of said commissioners, conferred at a meeting thereof duly convened and held.

§ 28. **Absence from meetings**—The office of any of the said park commissioners who shall not attend the meetings of the said board of the said park commissioners for three successive months, after having been duly notified of said meetings, without reason therefor satisfactory to said board, or without leave of absence from said board, shall by said board be declared vacant, and the term of office of said commissioner shall be ended thereby.

§ 29. **Grants and bequests**—Real and personal property may be granted, bequeathed, devised or conveyed to the said city of Rochester, for the purpose of the extension, improvement or ornamentation of the said park or parks, park-ways, approaches thereto and streets connecting the same, or for the establishments* or maintenance therein of museums, zoological or other gardens, collections of natural history, observatories, libraries, monuments, works of art, or bathing facilities, upon such trusts and conditions as may be prescribed by the grantors, or devisors thereof, and agreed to by the said park commissioners. All property so devised, granted, bequeathed or conveyed heretofore to the city of Rochester, within the boundaries of the system of parks, park ways, streets and approaches, under this act located by the park commissioners or hereafter for the purposes of this act acquired by the city of Rochester, and the rents, issues, profits and income thereof, shall be subject to the exclusive management, direction and control of the said the park commissioners. All other lands acquired by the said city of Rochester, under the provisions of this act, except lands received by gift, whenever the board of the park commissioners shall determine the same or any parcel thereof is unnecessary to be longer used for the purposes of the commission, may be sold at public auction after twenty days notice thereof in the official paper of the city by the city treasurer. The deed thereof shall be executed to the purchaser by the mayor of the city, and the purchase price thereof paid to the city treasurer and put to the credit of the park improvement fund, as an addition thereto.

*So in the original.

§ 29, *Supra*, **is constitutional**—In re application City of Rochester to acquire lands for park purposes, 137 N. Y. 243.

Park lands cannot be acquired for the purpose of re-selling, but unnecessary lands may be disposed of, and the provision of § 29, *supra*, authorizing sale, does not render the act void—In re application City of Rochester, etc., 48 St. Rep. 358.

§ 30. **Park ordinances**—It shall be lawful for said board of the park commissioners, at any meeting thereof duly convened, to pass such ordinances as they may deem necessary, for the use, regulation, protection and government of the said park or parks, park ways, approaches thereto, and streets connecting the same, not inconsistent with the ordinances of the city of Rochester or with the provisions of this act; such ordinances shall, immediately upon their passage, be published for ten days in two daily newspapers published in said city, one of which shall be the official paper.

§ 31. **Penalties for violation of park ordinances**—All persons offending against such ordinances shall be deemed guilty of a misdemeanor and shall be punished, on conviction, before any court or magistrate of competent jurisdiction in the city of Rochester, by a fine not exceeding one hundred dollars or by imprisonment not exceeding thirty days, or both, at the discretion of the court.

§ 32. **Proceedings in supreme court**—All proceedings in any court, contemplated by this act shall be had in the supreme court of the state of New York, except under the last preceeding section. Whenever in this act the words "streets connecting" are used, the same refer only to streets within the boundaries of the grounds located by the board, and reported to the common council under section three of this act.

§ 33. **City officials ineligible as commissioners**—No officer of the said city of Rochester, receiving a fee or salary for his services except commissioner of deeds, shall be eligible to the office of a park commissioner, and acceptance by any park commissioner of such elective or appointed office of said city, shall vacate his said office as park commissioner.

§ 34. **Police protection to be provided by the commissioner of public safety of the city of Rochester**—It shall be the duty of the commissioner of public safety of the city of Rochester to

provide police protection for the parks, park-ways, the approaches thereto and the streets connecting the same. Said commissioner of public safety shall within thirty days after this act takes effect, provide for the physical examination of all members of the existing park police force and shall appoint all members of said park police force who are found on such examination to be physically qualified for police duty, to be members of police force of said city. (*Added by L.* 1900, *Ch.* 484).

§ 35. **When in effect**—This act shall take effect immediately.

AN ACT TO AUTHORIZE THE CONSTRUCTION AND MAINTENANCE OF PARK BOULEVARDS IN AND NEAR THE CITY OF ROCHESTER, AND PROVIDE FOR THE COST AND EXPENSE THEREOF. (*L.* 1891, *Ch.* 317).

Section 1. **Powers of commissioners**—The park commissioners of the city of Rochester, in addition to the powers already granted to them by chapter one hundred and ninety-three of the laws of eighteen hundred and eighty-eight, and the amendments thereto, shall have power to select and locate such grounds in and near the city of Rochester, as may in their opinion be proper and desirable to be reserved, set apart or acquired for one or more public park boulevards, and for this purpose may take any part or parts of existing streets in said city and change the lines thereof, and may take by gift, or purchase, or may acquire by condemnation proceedings, such land or lands as may to them seem necessary for such purposes.

§ 2. **Resolution of commissioners**—Whenever said park commissioners shall determine to lay out any park boulevard, they shall at a regular meeting of said commissioners by resolution declare such determination, and shall cause an estimate of the cost and expenses of such improvemen* to be made, and they shall describe and declare the portion or part of the city of Rochester, which they deem proper to be assessed for the expense of such improvement, and if in the judgment of said commissioners a part of such expense should be paid by the city at large, they shall declare what part or portion of such expense shall be paid from the public treasury and

*So in the original.

what part or portion thereof shall be assessed on the territory declared by them to be benefited. Where the taking of land or the acquirement of a right or easement therein is necessary, it shall not be necessary to include the damage and charges therefor in the estimated expense.

§ 3. **Certificate to common council**—As soon as practicable after the adoption by said commissioners of a resolution as in section two herein provided, said commissioners shall certify to the common council of the city of Rochester a copy of such resolution, with a minute of all the proceedings relating thereto, containing a description of the proposed improvement, the estimated expense of the same, the proportion, if any, of the cost of such improvement to be paid from the public treasury, and the portion or part of the city to be assessed.

§ 4. **Action of common council**—At a regular meeting of the common council of the city of Rochester, held after such resolution shall have been certified to it the said common council shall proceed to consider said resolution, and the improvement proposed thereby, and shall take action thereon in the same manner as action is had and taken by it on matters of public improvements under the provisions of the charter of the city of Rochester, except that it shall not be necessary for said common council to have any further estimate of the cost or expense of such improvement other than is furnished by such resolution.

§ 5. **Acquiring title of lands**—Whenever the common council shall determine to make any of the improvements in this act authorized, and it shall be necessary for the purpose of such improvement to acquire title to the lands of any person or corporation, the city of Rochester is hereby authorized and empowered to acquire such lands, or any rights or easements therein, that may be necessary, either by gift, purchase or condemnation proceedings, and whenever it may be necessary to acquire such lands by condemnation proceedings, the said proceedings shall be taken in the same manner and form as is had and taken by said city in acquiring land for the purpose of opening streets, under the provisions of the charter of the city of Rochester.

§ 6. **Title in city of Rochester** Whenever the fee, or any right or interest in lands shall be acquired by the city of Rochester by virtue of this act, or the proceedings authorized herein, for the purposes of this act, such lands shall be taken in the name of the city of Rochester, but shall be subject to, and shall be under the management and control of the park commissioners, and shall become and be a part of the park system of said city.

§ 7. **Ordinance; payment of improvement** Whenever the common council shall determine that the improvements recommended by resolution of the park commissioners shall be made, and that the whole or any part of the expenses of such improvement shall be defrayed by an assessment on the real estate, declared by said resolution of said park commissioners to be benefited thereby, it shall declare the same by an entry in its minutes, and after ascertaining as it deems proper the estimated expense of such improvement, it shall declare whether the whole or what portion thereof shall be assessed on such real estate specifying the estimated expense and the portion of the city deemed benefited by the improvement. When the estimate of the expense of such improvement, to be assessed, shall exceed in the aggregate, the sum of two thousand dollars, the expense of such improvement to be assessed may be paid one-third in cash, and the balance in the city's note at one and two years, with interest not exceeding six per centum, payable annually, and the city may get its notes discounted for a period not exceeding one year with which to make such first payment when such improvement is completed. The entire expense thereof and connected therewith shall be ascertained by the city treasurer, together with the interest paid on the orders or notes issued by the city to pay the expense of such improvement, and interest on such sum shall be reckoned to the time the last installment of such assessment shall become due. The aggregate amount shall thereupon be reported to the common council, to adjust and report to the assessors of said city the amount to be assessed upon the property benefited, as in this act provided, and it shall meet for that purpose. Persons so assessed who shall make any payment previous to the maturity of said last installment therein, shall be entitled to a discount at the same rate as if paid on the city's note issued to pay for such improvement. The common council may determine, at the

time of fixing such amount to be assessed, if the sum shall exceed two thousand dollars, that the taxpayers pay their assessments, in not more than three equal payments, one-third within thirty days of the time that the treasurer shall advertise the same, as hereinafter provided one-third within one year, and one-third within two years from the confirmation of such roll: The city treasurer may, in his discretion, issue his warrant for the collection of any part of such assessment that may have become due.

§ 8. **Assessment**—The common council shall, thereupon, make an order reciting the amount of the expenses to be assessed, as aforesaid, and thereupon the assessors of said city if they are not interested in any of the property directed in the ordinance, or in any other subsequent resolution, to be assessed and not of kin to any person interested in any such property, and if any two of them are not so interested or of kin, then such two shall make an assessment upon all the lots and parcels of land within the portion or part of the city directed to be assessed, of the amount of expenses, in proportion, as nearly as may be, to the advantage which each shall be deemed to receive by such improvement, which order shall be certified by the clerk of the city and delivered to one of said assessors. The said assessors shall thereupon take action thereon, and proceed in the same manner, as if said assessment was an assessment for an improvement authorized by the charter of the city of Rochester. The common council shall have power, instead of designating the city assessors to make such assessment, to appoint one or more special assessors for such purpose, who shall have the same powers and be subject to the same duties, and proceed in the same manner provided in reference to the city assessors. All assessments made under this act shall be collected in the same manner as provided in the charter of the city of Rochester for the collection of assessments for local improvements.

§ 9. **Park improvements**—Whenever the common council shall have determined to make any improvement authorized by this act, the park commissioners of the city of Rochester shall have sole power to execute the work necessary, and said improvement, and all matters and things appertaining

thereto shall be under the control and management of the said park commissioners, and the said work may be done by said commissioners, either by contract or otherwise, as in the judgment of said park commissioners may seem best. Said common council is hereby authorized and empowered to borrow money upon the credit of said city, for the purposes specified in this act, in such amounts as may be necessary to anticipate the collection of the assessments herein provided for, in such manner and form and for such time as said common council may determine, and at a rate of interest not exceeding four per centum per annum; or said common council may authorize said park commissioners to pay out of the park boulevard fund, the expenses of said improvements which are to be paid by local assessment; said moneys so advanced to be refunded when said assessments shall have been collected. (*As amended L.* 1899, *Ch.* 304).

§ 10. **Park boulevard fund**—For the purpose of paying such part or portions of the expense of any improvement authorized by this act, which shall be declared payable out of the public treasury, the common council shall raise annually such sums as shall be reported by its finance committee as necessary for that purpose. The said finance committee shall ascertain and report the amount of money necessary for this purpose, in the same manner and at the same time that said committee ascertains and reports the sums necessary to be raised in each year for the various funds and departments of said city; and the common council shall raise the sum or sums necessary to be raised for the purposes of this act in the same manner and at the same time as are raised the various sums of money necessary for the various funds and departments of said city, and such moneys when raised shall be set apart by the treasurer of the city of Rochester, and credited to a fund to be known as the park boulevard fund; said treasurer shall hold all such moneys on account of and for the purposes of the improvements herein authorized, and shall pay them out on order of the park commissioners and not otherwise. The park commissioners shall draw drafts upon the said treasurer, signed by the president and secretary, specifying the purpose for which they are drawn, and the name of the fund from which they shall be paid, and the said city treasurer shall pay the same out of the said fund.

§ 11. **Care and maintenance of boulevard**—For the purpose of paying for the care and maintenance of said park boulevards after the same shall have been constructed, the common council of said city shall annually, upon the written application of the park commissioners, levy a tax upon all the lands abutting upon such park boulevards not exceeding, in any one year, the sum of ten cents per lineal foot front of all lands abutting on such park boulevards. The tax shall be apportioned equally upon all the lands, so on such park boulevards, and shall be collected at the same time and in the same manner, as the general city tax in said city. The amount of such tax, when collected shall be set apart, by the city treasurer of said city and credited to the said park boulevard fund.

§ 12. **When in effect**—This act shall take effect immediately.

AN ACT TO PROVIDE FOR THE ACQUISITION AND IMPROVEMENT BY THE CITY OF ROCHESTER OF CERTAIN LANDS IN SAID CITY FOR PUBLIC PARK PURPOSES. (*L.* 1903, *Ch.* 354).

Section 1. **Lands for parks, how acquired**—The park commissioners of the city of Rochester are hereby authorized to acquire for and on behalf of said city of Rochester for the purposes of a public park by purchase, gift, or by condemnation proceedings conducted under the laws now in force, prescribing the method of procedure of acquiring by the right of eminent domain, title to real estate in and near the city of Rochester for public parks, the title in fee free and clear from all claims, liens and encumbrances in and to certain real property described as follows: Being all that tract or parcel of land, situate in the city of Rochester, county of Monroe and state of New York, described as follows: Commencing at a point at the intersection of the south line of Main street east with the north line of University avenue; thence running along the south line of Main street east about four hundred and nine and twenty-four hundredths feet to the west line of North Union street; thence running along said west line of North Union street about two hundred and fifty-nine and five-tenths feet to the north line of University avenue; thence along the north line of University avenue about three hundred and fourteen and eighty-four hundredths feet to

the place of beginning. The cost of said lands to be acquired under the provisions of this act shall not exceed the sum of thirty thousand dollars.

§ 2. **Use of lands**—Said property when acquired shall be laid out as a public park and improved and embellished under the direction of said park commissioners, and the said park commissioners shall have the care, maintenance and control thereof.

§ 3. **Bonds**—For the purpose of providing funds for the purchase of said lands and the expenses connected therewith, and for laying out the same as a public park and improving and embellishing the same, the common council of the city of Rochester is hereby authorized to cause to be issued bonds of said city of Rochester to be known as "city of Rochester park bonds," the aggregate amount thereof not to exceed thirty thousand dollars, which bonds shall be signed by the mayor and treasurer of said city, sealed with the corporate seal of said city and countersigned by the comptroller of said city, and shall be payable at such place as the common council shall designate, and shall bear interest at a rate not exceeding four per centum per annum, and shall be sold under the direction of the comptroller after competition upon sealed proposals, at not less than par; said bonds shall be issued in denominations of one thousand dollars each and shall run for a period of ten years from the date of issue, and shall contain a provision that they may be redeemed at the end of five years or thereafter upon the payment of principal and accrued interest. The amount of the principal of three of said bonds shall be raised each year thereafter in the annual levy of taxes, together with interest accrued and to accrue during such year upon all of said bonds unpaid and unredeemed, until a sufficient sum is raised to pay and redeem said bonds, and the sums so raised shall be paid into a sinking fund from which the principal and interest of said bonds shall be paid, and any of said bonds may be paid and redeemed at the end of five years or thereafter as may be directed by the common council.

§ 4. **City notes**—Pending the issue and sale of said bonds, the common council is hereby authorized to cause the moneys necessary to carry out the purposes of this act, or any part thereof, to be raised and borrowed on city notes which shall be paid and redeemed from the

proceeds of the sale of the said bonds. The proceeds of the sale of said bonds or notes shall be paid into the city treasury and paid out on the draft of the park commissioners, in the same manner as moneys are drawn out of the "park maintenance fund."

§ 5. **When in effect**—This act shall take effect immediately.

Act authorizing the common council to borrow money to provide for temporary wants of park board—L. 1894, Ch. 4.

Act authorizing gifts and devises for parks—L. 1887, Ch. 134, as amended L. 1892, Ch. 25, L. 1896, Ch. 53.

POLICE DEPARTMENT

AN ACT TO ESTABLISH A POLICE PENSION FUND FOR THE CITY OF ROCHESTER. (*L. 1887, Ch. 614*).

Section 1. **Board of trustees; officers; duties; rules and regulations; annual report**—The mayor of the city of Rochester for the time being (and his successors in office), the police commissioners of the city of Rochester for the time being (and their successors in office), and the city treasurer of the city of Rochester for the time being (and his successors in office), shall constitute a board of trustees of the police pension fund hereinafter mentioned. The mayor of the city of Rochester shall be president of said board, and they shall annually designate one of their number who shall be secretary thereof. The city treasurer of the city of Rochester shall be the treasurer of said pension police fund. Such board of trustees shall have charge of and administer said fund, and, from time to time, invest the same, or any part thereof, as they shall deem most beneficial to said fund, and are empowered to make all necessary contracts and take all necessary and proper action and proceedings in the premises and to make payments from said fund of pensions granted in pursuance of this act. The said trustees shall, from time to time, establish such rules and regulations for the administration of the police pension fund as they may deem best. They shall report, in

detail, the condition of the fund at the close of each fiscal year of the police department, through their secretary, to the common council, and said report shall be published with the annual report of the police department. No payments whatever shall be allowed, or made, by said trustees as rewards, gratuities or compensation to any person for salary or services rendered to or for said board of trustees.

§ 2. **Police pension fund, how created** The police pension fund shall consist of:

1. All fines imposed upon members of the police force by the commissioner of public safety and all moneys, pay, compensation or salary, or any part thereof, forfeited, deducted or withheld from any member or members of the police force, for or on account of absence for any cause, lost or sick time, sickness or disability. (*As amended L.* 1903, *Ch.* 382).

2. All moneys paid for special services as policemen at balls, parties, weddings, excursions or picnics, and all rewards or gifts that may be paid or given to any member of the police force for his services. (*As amended L.* 1903, *Ch.* 382).

3. The avails of all lost or stolen securities, choses in action, moneys, things, or other property which shall remain unclaimed in possession of the police department for the period of six months after the conviction for stealing the same, together with the avails of all unclaimed or confiscated property of every nature soever which shall have been in custody of said police department for such period of six months, and all cash, money or property left as security for appearances in police court which shall be forfeited. (*As amended L.* 1903, *Ch.* 382).

4. All fines imposed in the police court of the city of Rochester and collected for carrying or having in custody concealed or dangerous weapons, and for violations of an ordinance adopted by the common council of said city, entitled "An ordinance relating to the public safety and good order," as now or hereafter named, and one-half of all fines so imposed and collected for non-registration of dogs. (*As amended L.* 1903, *Ch.* 382).

5. All revenues derived from licenses for public use of triplet, billiard and pool tables, or any other similar table for revenue, bowl-

ing alleys and pawnbrokers, and all fines and penalties collected and collected through prosecutions connected with the public use of triplet, billiard and pool tables, bowling alleys and pawnbroking business. The license fees to be charged for the use of bowling alleys, triplet, billiard and pool tables, or any other similar table for revenue of said city, shall be at the rate of five dollars each for the first two tables or alleys, and two dollars for each additional alley or table used or put up in the same room in any one year. And the commissioner of public safety of said city is hereby authorized to designate a member of the police department, whose duty it shall be to deliver all such licenses granted and issued by said commissioner of public safety in the name of the city of Rochester, to all proper persons applying therefor, within the city, upon the payment to him of said license fees, and it shall be the duty of such persons to pay over any and all of the said moneys thus received by him to the treasurer of the police pension fund. No person shall keep a bowling alley, billiard or pool table for revenue in said city, without first obtaining a license therefor, under a penalty, upon conviction, of ten dollars, and in default of payment shall be imprisoned in the Monroe county penitentiary ten days, or until said fine is paid, not exceeding ten days. (*As amended L.* 1903, *Ch.* 382).

6. Such sum per month to be paid by each member of the police force, as shall be agreed upon by the members of said force, not less than two per centum of the monthly pay, salary or compensation of each member of the police force. (*As amended L.* 1903, *Ch.* 382).

7. The board of estimate and apportionment shall include in their annual estimate and the common council shall annually include in the tax levy the sum of three thousand dollars, which sum shall, at the time when the appropriation for the conduct of the police department shall be made, be set apart or so much thereof as shall be necessary, and paid over to the treasurer of the police fund. (*As amended L.* 1903, *Ch.* 382).

§ 3. **Pensioners.** The board of police commissioners shall have power, in its discretion, by the unanimous vote of a full board, to retire and dismiss from membership in the said police force, and thereupon grant pensions, as hereinafter provided, to any member of

the police force of said city who shall have become disabled, physically or mentally, or so advanced in age as to be unfit for police duty, and, by a unanimous vote of the board, to widows and orphans of such members, to be paid from the police pension fund by the board of trustees thereof as follows:

1. To the widow of any member of the police force who shall have been killed while in the actual performance of duty or shall have died from the effects of any injury received whilst in the actual discharge of such duty, or who has died, or who shall hereafter die after fifteen years of service in the police force in the city of Rochester, or after such continued service in time as shall in the judgment of the said commissioners be equal to fifteen years regular service, though not covering fifteen calendar years, or who shall have been retired upon a pension under section four of this act, if there be no child or children under eighteen years of age of any such member, the sum of not exceeding two hundred and fifty dollars per annum; but if there be any such child or children of such member under the age aforesaid, then the said sum may be divided between such widow, child or children in such proportion and in such manner as the said board may direct. (*As amended L.* 1921, *Ch.* 721).

2. To any child or children under eighteen years of age of such member killed or dying as aforesaid, or pensioner as aforesaid, but leaving no widow, or, if a widow, then, after her death, to such child or children being yet under eighteen years of age, a sum not exceeding two hundred and fifty dollars per annum. (*L.* 1887, *Ch.* 614).

3. To any such member of said police force who shall, after fifteen years and less than twenty years membership, become superannuated by age, permanently insane or mentally incapacitated, or disabled, physically or mentally, so as to be unfitted or unable to perform full police duty by reason of such disability or disease, contracted without misconduct on his part, a sum not less than two hundred and fifty dollars nor exceeding five hundred dollars per annum. (*L.* 1887, *Ch.* 614).

4. In computing the time of service of any member of the police force for the purposes of this section, the term of service of such member on any regular police or fire department force of the city shall be computed and taken the same as service on the police force of the

city, and it shall not be deemed necessary for the purposes of this section that such service shall have been continuous. (*Added by L.* 1901, *Ch.* 433).

Granting pensions discretionary People ex rel. Bill v. Martin, 111 N. Y. 196.

§ 4. **Amount of pension of policemen, widows or children**—Any member of the police force who has, or shall have, performed duty therein for a period of twenty years or upward, and any member of the police force who, whilst in the actual performance of duty, and by reason of the performance of such duty, and without fault or misconduct on his part, shall have become permanently disabled physically or mentally, so as to be unfitted to perform full police duty, upon his own application, in writing, or upon a certificate of the police surgeon, showing that such member is permanently disabled, physically or mentally, so as to be unfit for duty, shall, by resolution, unanimously adopted by a full board, be retired and dismissed from said force and service, and placed on the roll of the police pension fund and awarded and granted to be paid from said pension fund, an annual pension during his lifetime of a sum of not less than one-half of the full salary or compensation of such member so retired. Pensions granted under this section shall be for the natural life of the pensioner, and shall not be revoked, repealed or diminished. Pensions may, in the discretion of the said board of police, be continued and paid to the widows and children; or, if no widow, to the child or children, whilst under the age of eighteen years, of any member or members of the police force to whom pensions shall have been granted, under the provisions of this section, or under subdivision three of section three of this act; provided, however, that such pensions to such widows or children, as the case may be, shall, in no instance, exceed five hundred dollars per annum, and the same may, in the discretion of said board, be from time to time diminished, modified or revoked. (*As amended L.* 1894, *Ch.* 510).

Retiring a policeman discretionary People ex rel. Scully v. Adams, 118 N. Y. 253.

§ 5. **Termination and revocation of pensions**—Pensions to widows shall terminate when the widow shall remarry, and pensions to children shall terminate whenever the children shall, respectively,

arrive at the age of eighteen years. The police commissioners may, in their discretion, order any pension granted, or any part thereof, to cease, except in the case of members of the police force retired after twenty years service, as provided in the last preceding section, but in all such cases said board shall file with the trustees of the police pension fund a written statement of the causes which determined them in ordering any pension to so cease, and nothing herein contained shall render the granting or payment of such pension obligatory on the police commissioners, or upon the trustees of the police pension fund, or chargeable as a matter of right upon said police pension fund, except as provided in the last preceding section.

§ 6. **Certificate of surgeon; contents.** No member of the police force shall be awarded, granted or paid a pension on account of physical or mental disability or disease, unless upon the certificate of the surgeon of the police department, which shall set forth the cause, nature and extent of the disability, disease or injury of each member of the police force who may be placed upon the pension roll; and said certificate shall distinctly state whether or not such disability, disease or injury was incurred or sustained by said member of the police force in the performance of police duty, and such certificate shall in each case be filed with and entered upon the minutes of the police commissioners.

§ 7. **Pro rata payment when funds inadequate.** Should the moneys at the disposal of the trustees of the police pension fund be found at any time inadequate to fully carry out the provisions of this act, the trustees shall pay to the dependents on such fund as near a pro rata amount as in their judgment the circumstances may warrant.

§ 8. **False swearing in pension claim, how punished.** Every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit or affirmation concerning any claim for pension or payment thereof, shall in every such case forfeit a sum not exceeding two hundred and fifty dollars, to be sued for and recovered by and in the name of the said board of trustees, and when recovered paid over to and thereupon become a part of the said police pension fund.

§ 9. **Power of board of trustees to take oaths and acknowledgments; perjury**—For the purposes of this act, the persons constituting the board of trustees of the police pension fund are hereby authorized to administer oaths and take acknowledgments; and any person who shall willfully swear falsely in any oath or affirmation in obtaining or procuring any pension or payment thereof, under the provisions of this act, shall be guilty of perjury.

§ 10. **Pension fund exempted from execution**—The moneys, securities and effects of the police pension fund, and all pensions granted and payable from said fund, shall be and are exempt from execution and from all process and proceedings to enjoin and recover the same by or on behalf of any creditor or person having or asserting any claim against, or debt or liability of, any pensioner of said fund.

§ 11. **When in effect**—This act shall take effect immediately.

AN ACT LEGALIZING, RATIFYING AND CONFIRMING CERTAIN APPOINTMENTS AND PROMOTIONS HERETOFORE MADE IN THE POLICE DEPARTMENT OF THE CITY OF ROCHESTER. (*L.* 1896, *Ch.* 706).

Section 1. **Police department appointments legalized**—All appointments and promotions heretofore made in the police department of the city of Rochester from the competitive eligible list prepared by the civil service commissioners of said city are hereby legalized, ratified and confirmed.

§ 2. **Actions pending**—This act shall not affect any action or proceeding now pending.

§ 3. **When in effect**—This act shall take effect immediately.

AN ACT IN RELATION TO THE POLICE DEPARTMENT OF THE CITY OF ROCHESTER. (*L.* 1893, *Ch.* 504).

Section 1. **Vacations of policemen**—The board of police of the city of Rochester may grant to each member of the police department thereof, who has not for a period of twelve months next preceding violated any of the rules or regulations prescribed by law, or

by said board of police, a vacation of not more than seven successive days in each year with pay and a leave of absence of one day in each month beginning at six o'clock in the evening of one day and ending at six o'clock in the evening of the following day, with pay. No discrimination or preference in granting such vacations or leaves of absence shall be made as between members so qualified, but if such a vacation or leave of absence be granted to any member so qualified a like vacation or leave of absence shall be granted as impartially and equally as may be to each member so qualified. Such a vacation or leave of absence may be suspended by the board of police at any time when, in the judgment of the board, the public interests require such suspension.

§ 2. **When in effect.** This act shall take effect immediately.

Act for the relief of William H. Bauer. L. 1901, Ch. 272.

Act for the relief of Jacob Markey. L. 1901, Ch. 1[illegible].

PUBLIC MARKET

AN ACT TO AUTHORIZE THE CONSTRUCTION AND MAINTENANCE OF A PUBLIC MARKET OR MARKETS IN THE CITY OF ROCHESTER, AND THE LOCATION AND ACQUISITION OF GROUNDS THEREFOR, AND TO PROVIDE FOR THE MAINTENANCE THEREOF. L. 1901, Ch. 584.

SECTION 1. **Market commissioners.** Charles H. Babcock, Alexander B. Lamberton, Edwin A. Fisher, George A. Lane and William Delhinger are hereby appointed commissioners of the public market or markets which may be created pursuant to the provisions of this act, with the name and style of "Market Commissioners." The said market commissioners shall hold office for the term of three years from the first day of May, nineteen hundred and one, and until others are appointed in their places. At the expiration of the term of office of any member of said market commission, the said office shall be filled by appointment by the mayor of the city of Rochester, and a person so appointed shall hold his office for a term of three

years from the date of his appointment and until a successor be appointed in his place. In case of a vacancy in the board of market commissioners, the mayor shall fill the vacancy by appointment for the remainder of the term. No member of said board shall receive any compensation for his services.

§ 2. **Meetings of market commission** Every commissioner shall, before entering upon the duties of his office, take and subscribe the oath prescribed by the constitution of the state, which oath shall be filed in the office of the clerk of the county of Monroe. The said market commissioners shall hold their first meeting on the first Monday of May, one thousand nine hundred and one, at eleven o'clock ante meridian, at the mayor's office in said city, and shall, at said meeting, elect by ballot a president, vice-president, secretary and treasurer, who shall be members thereof. A majority of said board of market commissioners shall constitute a quorum for the transaction of business; and the said market commissioners shall have power to adopt by-laws, not inconsistent with the ordinances of the common council, with the provisions of this act, or with the other laws of the state, for the orderly transaction of their business and performance of their duties hereunder. Meetings of the board shall be held at least once in each calendar month; and the office of any of the said commissioners who shall not attend the meetings of the board for three successive months, after having been duly notified of said meetings, without reason therefor satisfactory to said board or without leave of absence from said board, shall by said board be declared vacant; and the term of office of said commissioner shall be ended thereby.

§ 3. **Powers of commission** Said market commissioners shall have power, subject to the approval of the common council, to select and locate such grounds within the city of Rochester as may, in their judgment, be desirable to be reserved, set apart and acquired for one or more public markets and approaches thereto, and for this purpose, and by and with the consent of the common council of said city, may take any part or parts of existing streets and change the lines thereof. The site or sites shall be selected with a view to the general convenience and advantage to residents in every portion of said city. Within ten days after organization the said commissioners shall advertise for proposals or tenders of a site or sites, which adver-

tisement shall specify within maximum and minimum limits, the amount of private lands desired, and the maximum amount that will be paid therefor. Such advertisement for tender or proposals shall be published in the official newspaper of said city twice a week for three weeks and the expense thereof shall be a general city charge. As soon as practicable after such proposals, if any, are received, the said market commissioners shall make selection of the site or sites within the city deemed most desirable and in the making of such selection shall not be restricted to premises described in any proposals received; and after making such selection shall have surveys and plans made by and under the supervision of the city engineer, showing in detail the site selected and plans contemplated, and shall report all proposals received by them and the site selected, to the common council of said city. After the approval by the common council of the site selected, the said market commissioners shall enter into agreements of purchase of lands selected for which the owners will make contracts of sale. Such agreements of purchase shall be subject to the approval of the board of contract and supply of said city, and the purchase price thereof shall be paid out of the market fund hereinafter provided from the sale of the Rochester market bonds. All parts of streets, avenues and highways now laid out as running through said lands desired by said market commissioners to be closed and discontinued, shall be closed and discontinued by and with the consent of the common council, in the manner provided by law for the discontinuance of streets in the city of Rochester. All lands acquired, either by private purchase or condemnation, under and in pursuance of this act, are hereby declared to be public places.

§ 4. **Condemnation proceedings**—In case the said board of market commissioners is unable to agree with the owner or owners for the purchase of any real estate or lands, or rights or easement therein, required for the purpose aforesaid, they shall thereupon report said fact to the common council of the city of Rochester, and said common council shall thereupon have the right to acquire the title to the same by condemnation proceedings conducted under the laws prescribing the method of procedure of acquiring title to real estate for streets and other corporate purposes, by the right of eminent domain in the city of Rochester.

§ 5. **Construction of buildings** After the acquisition of lands, either by condemnation or private sale as hereinbefore provided, the said commissioners shall have plans and surveys prepared by and under the supervision of the city engineer, for the construction of such buildings and making of such improvements upon such lands as in the judgment of said commissioners are deemed necessary or desirable; and contracts therefor, within the limits of moneys available for that purpose, based upon specifications prepared by or under the supervision of the city engineer, shall be made by the board of contract and supply of said city, after public notice, in the manner provided by law for the making of contracts for the performance of work or supplying of materials for the department of public works and other public departments of said city.

§ 6. **Commissioners not to be interested in contracts** It shall be a misdemeanor for any commissioner to be directly or indirectly or in any way pecuniarily interested in any contract or work of any kind whatever connected with said market, markets, approaches thereto or streets connecting the same, and it shall be the duty of any commissioner or other person who may have knowledge or information of the violation of this provision, forthwith to report the same to the mayor of the city of Rochester, who shall present the facts of the case to the supreme court of the state of New York. The said court shall hear, in a summary manner, such commissioner in relation thereto, and any evidence he may offer; and if, after such hearing, the said court shall be satisfied of the truth of said charge, the justice holding the same shall, by an order of the said court, to be made at chambers or in term, immediately remove the said commissioner.

§ 7. **Employment of assistants** The said market commissioners, for the purpose of performing the duties imposed upon them by this act, shall have the power to employ such assistants at such salaries or compensation as may be authorized and prescribed by the board of estimate and apportionment, at a yearly expense not exceeding two thousand dollars, which assistants and employees shall perform such duties as may be imposed upon him or them, respectively, by said market commissioners; and the salary or salaries or compensation of such assistants and employees, when certified by the

market commissioners, shall be a charge upon the city of Rochester and shall be paid out of the moneys hereby authorized to be raised for the purposes of this act.

§ 8. **Contracts of commission**—None of the said market commissioners, nor any person employed by them, shall have power to create any debt, obligation, claim or liability for or on account of said market or market commissioners, except with express authority of said commissioners, conferred at a meeting thereof, duly convened and held. The said commissioners shall make requisition in writing to the board of contract and supply for the performance of any work or repairs and the furnishing of any materials or supplies required, and the board shall contract for or authorize the same as provided in section one hundred twenty of the charter of cities of the second class.

§ 9. **Monthly report**—All employees or officials connected with the said markets, authorized by the ordinances of the common council or otherwise to receive and handle market moneys and revenues, shall give a bond to the city of Rochester for the faithful performance of their duties, in a form approved by the corporation counsel, and in an amount and with a sufficiency of sureties approved by the mayor of said city, before entering upon the discharge of their duties with respect to the receipt of any public moneys. All moneys and revenues received from the sale of privileges and licenses at said markets or pertaining thereto, shall be deposited daily with the treasurer of said city to the credit of the market fund; and the said market commissioners shall cause a monthly report to be made to the common council of said city not later than the tenth day in each month after the said market is opened, which monthly reports shall state the amount of business done at said market since the date of the last report, the amount of all revenues received, the source thereof, and the amount paid or incurred for salaries and other running expenses of said market within such time. The said market commissioners shall, in the month of January in each year, make to the common council of said city a full report of their proceedings and a detailed statement of all their receipts and of the expenditures pertaining to said markets during the preceding fiscal year.

§ 10. **Market ordinances**—The common council of said city shall have power to adopt such ordinances not inconsistent with the provisions of this act or of the other laws of the state as it may deem necessary or desirable for the regulation, management and conduct of the said markets; and the said market commissioners, subject to the ordinances of the common council and the provisions of this act, shall have general executive supervision, control, direction and management of the said markets.

§ 11. **Market privileges**—No privilege, place or stand in the said markets or in the business done thereat, for a longer term than one month shall be sold, contracted or awarded, gratuitously or otherwise, to any person, corporation or firm, except after public notice, to the highest responsible bidder; nor shall any lease of any stand, or privilege in or pertaining to said markets for a longer term than three years be let, awarded or given to any person, firm or corporation. The amount of all general licenses, fees and charges for market privileges shall be fixed by general ordinance of the common council.

§ 12. **Market expenses** On or before the first day of November in each year, the said market commissioners shall cause to be furnished to the mayor estimates in writing of the amount of expenditures for the maintenance and conduct of said markets for the next fiscal year including a statement of the salaries of the market officials and employees, which estimates the mayor shall lay before the board of estimate and apportionment at its next meeting thereafter, and, after consideration and such action or amendment as the board of estimate and apportionment of the city may choose to give it, such estimate shall be made a part of the yearly estimate of the board of estimate and apportionment, and be submitted to the common council, in the same manner and in accordance with the provisions of law prescribing the yearly estimates for the expenses of conducting the business of the various public departments of said city. The common council shall have the same power with respect to the said estimates for the expense of conducting the said public markets, as is provided by law with respect to the other items of the annual estimate of the board of estimate and apportionment of said city; and the amount estimated by the board of estimate and apportionment for the expense of conducting said markets shall, after amendment, if any,

and adoption by the common council, become a part of the annual tax budget, and be levied, assessed and raised by tax upon the real and personal property liable to taxation in said city, in the same manner as is provided in and by the laws relating to the levying and collection of general city taxes for other public purposes.

§ 13. **Rochester market bonds**—For the purpose of providing funds to pay for lands acquired under the provisions of this act, and the expenses thereof, and of the cost of buildings and improvements thereon, the common council of the said city may from time to time, when requested by resolution of the board of market commissioners, cause to be issued bonds of the city to be known as the "Rochester market bonds," to an aggregate amount not exceeding one hundred and fifty thousand dollars. Said bonds shall run for a period of ten years, at a rate of interest not exceeding three and one-half per centum, and shall contain a provision that they may be redeemed at the end of five years or thereafter, upon the payment of principal and accrued interest, and shall be sold after competition, upon sealed proposals. The city treasurer shall cause to be kept in his office in a book to be provided for that purpose, a true and accurate statement and account of each and every bond issued under the provisions of this act, showing the number of each bond, the date and amount thereof, and the time when due, and such books shall be open for public inspection and shall be delivered to his successor in office. The lands purchased with the proceeds of the sale of said bonds are hereby pledged for the payment of said bonds at maturity; and said bonds shall be paid out of the city treasury if the redemption fund hereby created shall prove insufficient therefor.

§ 14. **Market bond redemption fund**—Until the bonds issued pursuant to the provisions of this act are paid, there shall be provided in each year, and paid into a fund to be known as the "market bond redemption fund," a sum equal to ten per centum of all outstanding market bonds. If the revenues and receipts of the said public market are less than a sum sufficient to pay the interest upon the market bonds, and the annual sinking fund installments, the amount of such deficiency shall be raised by general city tax.

§ 15. **Revenues from market**—All revenues or receipts from said markets shall be deposited with the city treasurer and placed to

the credit of the public market fund. Such revenues shall be applied: First, to the payment of interest upon the bonds issued in pursuance of this act. Second, any excess of revenues after the payment of the interest upon the bonds shall be applied to the payment of the annual sinking fund installment of ten per centum of the amount of outstanding bonds. Third, any excess of revenues remaining after the payment of the annual interest charges, and of the sinking fund installment shall be applied to the maintenance of said public market. Fourth, any excess of revenues remaining unexpended after the payment of the interest upon the bonds, the annual sinking fund installment and the annual expenses of maintenance, shall become available for the general expenses of the city government, and shall be applied to such public uses as in the judgment of the board of estimate and apportionment may be most beneficial to the city.

§ 16. **Treasurer the custodian of market revenues**—The treasurer of said city shall have the care and custody of all receipts and revenues of the said public market, and shall make all disbursements pertaining or relating to said public market and its management in accordance with the laws regulating the disbursements for the maintenance and operation of the other public departments of said city.

§ 17. **Market claims**—All claims against the city arising from or pertaining to the said market or its operation, shall be prepared, presented, audited and paid as provided by the laws regulating the procedure as to other claims against said city.

§ 18. **When in effect**—This act shall take effect immediately.

REWARDS

An Act authorizing the mayor of the city of Rochester to expend money and rewards in necessary expenses for the apprehension or conviction of persons guilty of crime in said city. [L. 1902, ch. 54.]

Section 1. **Mayor may offer rewards**—The mayor of the city of Rochester is hereby authorized to offer rewards and expend money in necessary expenses for the apprehension and con-

viction of persons guilty of committing crime in said city, in such an amount as shall be approved by the board of estimate and apportionment and the common council. The sums so expended shall be assessed and collected as other city charges.

§ 2. **When in effect**—This act shall take effect immediately.

ROCHESTER AND GENESEE VALLEY RAILROAD COMPANY'S STOCK

AN ACT TO AUTHORIZE THE CITY OF ROCHESTER TO SELL AND DISPOSE OF THE STOCK OF THE ROCHESTER AND GENESEE VALLEY RAILROAD COMPANY OWNED BY IT. *L.* 1903, *Ch.* 381.

SECTION 1. **City may sell railroad stock**—The city of Rochester is hereby authorized to sell and dispose of the stock of the Rochester and Genesee Valley railroad company owned by it, to the highest bidder or bidders, after competition, upon sealed proposals. At least ten days notice of such sale shall be published in the official newspapers. The other details of such sale and the time thereof shall be determined by the common council. The officer designated by the common council to conduct such sale shall have the power to reject all bids, whereupon bids may be re-advertised for.

§ 2. **When in effect**—This act shall take effect immediately.

SCHOOLS

AN ACT TO EMPOWER THE CITY OF ROCHESTER TO ACQUIRE TITLE TO LANDS TAKEN FOR, OR IN ADDITION TO, SITES FOR SCHOOL BUILDINGS. *L.* 1885, *Ch.* 274.

SECTION 1. **City authorized to acquire lands for school sites**—The city of Rochester is hereby authorized and empowered to acquire title to land designated by the board of education of said city as a site for a public school building, or additional land adjoin-

ing, and for the enlargement of an established site in the manner hereinafter specified, in cases where the said city is unable to acquire title to said land by purchase.

§ 2. **Proceedings**—The board of education of said city, by and with the consent of the common council, may present a petition in the name of the city of Rochester praying for the appointment of commissioners of appraisal to the supreme court at any general or special term thereof held in the seventh judicial district; such petition shall be signed and verified either by the mayor of said city or by the president of the said board of education; said petition shall contain an allegation that the board of education of the said city has designated the lands for the site of a public school building, or in addition to, and for the enlargement of, an established site, describing such land by its locality, and by metes and bounds, stating the quantity thereof, as nearly as may be, and shall state that the said city has not been able to acquire title thereto and the reason of such inability; and it must also state the names and places of residence of the parties who own or have, or claim to own or have, estates or interests in the property so sought to be acquired, as far as the same can by reasonable diligence be ascertained. If any of such persons are infants, their ages, as near as may be, must be stated; if any are idiots, or persons of unsound mind, or unknown, such facts must be stated, together with an allegation of all liens or incumbrances upon said property which are within the knowledge of the said board of education. Said petition shall be filed in the office of the clerk of the county of Monroe, and at the time of the filing thereof, or at any time afterward, the petitioners may cause a notice of the pendency of the proceeding to be filed in said office, which notice the county clerk shall file and record in the same manner that similar notices in actions in the supreme court are required to be filed and recorded, which notice shall state the object of the proceeding and contain a description of the land, and the names of the parties affected thereby. And all persons who shall claim in whatsoever way any title to, interest in, lien or incumbrance upon said land after the filing of the notice of the pendency of the proceedings aforesaid, shall be bound and affected by said proceeding in the same manner, and to the same extent, as if they had been named in the petition as parties thereto, and said persons

shall also be bound in the same manner, and to the same extent, by notice of the existence of said proceeding, whether notice of the pendency thereof has been filed or not.

§ 3. **Service of petition and notice.** A copy of said petition, with a notice of the time when and the place where the same will be presented to the supreme court, must be served on all persons whose interests are to be affected by such proceeding at least ten days prior to the presentation of such petition to the court. If the person upon whom such service is made resides in this state and is not an infant, idiot or person of unsound mind, service of a copy of such petition and notice must be made upon him personally, or by leaving the same at his usual place of residence with some person of suitable age. If the person on whom such service is to be made resides out of this state within any of the states of the United States, or in any of the British colonies in North America, such service must be made by publishing a notice stating briefly the object of the application and giving a description of the land or other property to be taken, in two daily newspapers published in the city of Rochester, once a week for six weeks next previous to the presentation, and also by depositing a copy of the petition and notice in the post-office at Rochester, properly folded and directed to such person at his post-office address, if the same can be ascertained, with postage thereon prepaid, at least thirty days before presenting such petition to the court. If any such person shall be an infant, such service shall be made, as aforesaid, upon his general guardian if he has one, and upon such infant personally if over the age of fourteen years; if under that age, on the person with whom such infant shall reside; in each case in the same mode and in the same number of days before the specified day for the presentation of the petition as if the service were upon an adult owner, according to the place of residence of such guardian, infant or person with whom such infant resides upon whom service is made. If the person upon whom such service is to be made is an idiot, or person of unsound mind, service shall be made upon the committee of his person or estate, or, if there be no such committee, then upon the person who shall have the care of such idiot or person of unsound mind in the same mode and the same number of days before presentation of the petition as in other cases; if the person upon whom such service is to be made is unknown, or his residence is unknown and

cannot by reasonable diligence be ascertained, then such service may be made, under the direction of the court, by publishing a notice stating the time and place where the petition will be presented, and the object thereof, with a description of the land or other property to be affected by the proceeding, in two daily newspapers printed in the city of Rochester, once a week for six weeks previous to the presentation thereof to the court. In all cases not herein otherwise provided for, service of the petition and notices and other papers in the proceedings authorized by this act shall be made as the supreme court in the seventh judicial district, or a judge thereof, shall direct.

§ 4. **Appointment of special guardians, etc.**—In case any party to be affected by the proceedings hereby authorized is an infant, idiot or of unsound mind, and has no general guardian or committee, the court to which such petition shall be presented shall, before taking any other proceedings thereon, appoint a special guardian to attend to the interests of such person in the proceedings; if a general guardian or committee has been appointed for such person in this state, it shall be the duty of such general guardian or committee to attend to the interests of such infant, idiot or person of unsound mind. The court may require security to be given by such general or special guardian or committee as it may deem necessary to protect the rights and interests of such infant, idiot or person of unsound mind. All notices required to be served in the progress of the proceedings may be served upon such general or special guardian or committee. Any person may appear in such proceedings by attorney upon whom all papers shall be served at the place designated in his notice of appearance. The court shall appoint some competent attorney to appear for and protect the rights of any party in interest who is unknown or whose residence is unknown, and who has not appeared in the proceedings by attorney.

§ 5. **Presentation of petition in court; proceedings.**—On presenting such petition to the supreme court as aforesaid, with proof of the service of a copy thereof, and of said notices as aforesaid, all persons whose estates or interests are to be affected by the proposed proceedings relative to the land described in the petition may appear in person, or by attorney, before the said court, and show cause against the granting of the prayer of the said petition. The court shall

hear the proofs and allegations of the parties, and if no sufficient cause be shown against granting the prayer of the petition, it shall make an order appointing three disinterested and competent freeholders who reside in the county of Monroe, as commissioners to ascertain and appraise the value of said land, and determine the compensation to be made to the owners or persons interested in said property so to be acquired; the said order shall also appoint the time and place for the first meeting of said commissioners.

§ 6. **Commissioners of appraisal; powers and duties; compensation; costs**—The said commissioners, before entering upon their duties, shall be sworn before some officer authorized to administer an oath, that they will fairly and impartially view the land in question, hear the proofs and allegations of the parties interested, and make a just and reasonable award of the compensation to be paid by the city of Rochester for the said land to be appropriated for the site, or a part of the site, of a public school building. The said commissioners shall have power to subpœna and administer oaths to witnesses, and the majority of them may adjourn the proceedings from time to time in their discretion. They shall also view the premises described in the petition, and hear the proofs and allegations of the parties, and reduce the testimony taken before them, if any, to writing, and after the testimony is taken in each case, they, or a majority of them, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made to the owners or persons interested in the property so sought to be acquired, and they, or a majority of them, shall also determine what sum ought to be paid to the general or special guardian of any infant, or to the committee of any idiot, or person of unsound mind, or to an attorney appointed to attend to the interests of any unknown owner or party in interest not personally served with notice of the proceeding, who has not appeared, for his costs and expenses; they shall make a report of their proceedings and award in the case, signed by them, or a majority of them, which shall be accompanied by the minutes of the testimony taken by them. The said commissioners shall each be entitled to five dollars for every day they are actually engaged in the performance of their duties, together with their expenses, which shall be paid by the city of Rochester. Where the owners, or persons interested in the property sought to be acquired shall have awarded

to them an amount not exceeding the compensation offered by the city of Rochester for such property so sought to be acquired for their interest therein, the said city may recover, and the said supreme court may award against such persons the amount so paid to said commissioners, and necessarily expended for witnesses, or such part thereof as said supreme court shall deem proper.

§ 7. **Confirmation of report**—On such report being made by such commissioners, the said city of Rochester shall give notice to the parties, or their attorneys, according to the rules and practice of the supreme court, that application will be made to the said court at a general or special term thereof for the confirmation of such report, and the court shall thereupon make an order reciting the proceedings, giving a description of the land appraised, confirming the report, and directing to whom the compensation awarded shall be paid, or in what bank, or in what manner it shall be deposited by the said city.

§ 8. **Delivery of certificate; recording order; appeals**—A certified copy of the last mentioned order shall, without unnecessary delay, be delivered by the clerk of said court to the mayor, or president of the board of education of said city, whose duty it shall be, forthwith, to cause the same to be recorded, at the expense of the city of Rochester, in the office of the clerk of the county of Monroe. Upon said order being recorded as aforesaid, and upon the payment or deposit by the said city of the sum to be paid as compensation for the property so taken, and for the costs and expenses, as aforesaid, as directed by said order, the said city shall be entitled to enter upon, take possession of and use the said property as a site for a public school building, and all persons who have been made parties to the said proceedings shall be divested of all right, estate and interest in the same. All property acquired pursuant to the provisions of this act shall be deemed to be acquired for public use. Within twenty days after confirmation of the report of said commissioners either party may appeal, by notice, in writing, to the others, to the supreme court, from the appraisal and report of the said commissioners; such appeal shall be heard by the supreme court at a general or special term thereof on the usual notice required by the rules and practice of said court. On the hearing of such appeal the court may direct a new appraisal before the same or new commissioners, in its discretion. No appeal shall affect the pos-

session or use by the said city of the property so appraised, and when the same is made by others than said city, it shall not be heard, except on stipulation of the party appealing not to disturb such possession.

§ 9. **Deposit of money into court**—If there are adverse and conflicting claims to the money, or any part of it, to be paid as compensation for the property so taken, the court may direct the money to be paid into court, and may determine who is entitled to the same, and to whom the same shall be paid, in a summary manner, and may order a reference to determine the facts on which such determination and order shall be made.

§ 10. **Power of court to make orders, etc.**—When the mode or manner of conducting any of the proceedings to the appraisal of the property sought to be taken, and the proceedings consequent thereon, are not expressly provided for in this act, the said court before whom such proceedings are pending shall have power to make all necessary orders to that end. The said court shall also have power at any time to amend any defect or informality in any of the proceedings authorized by this act, or cause new parties to be added to said proceedings and further notice to be given to any party in interest as it may deem proper; and the court shall also have power to appoint commissioners in the place of any who shall die, refuse to serve, or be incapable of serving.

§ 11. **Power of court to enforce act**—In case of appraisal under this act the court shall have power to make all necessary orders and directions to carry into effect the object and intent of this act, and to compel the delivery to the said city of Rochester of the possession and control of all property or rights acquired thereby. The practice in such cases shall be conformed, as nearly as may be, to the ordinary practice of said court.

§ 12. **When in effect**—This act shall take effect immediately.

AN ACT TO INCORPORATE THE ROCHESTER TEACHERS' RELIEF SOCIETY. (*L.* 1893, *Ch.* 426).

AN ACT TO AUTHORIZE THE CITY OF ROCHESTER TO LEVY A TAX FOR THE PURPOSE OF ERECTING A NEW SCHOOL BUILDING. (*L.* 1893, *Ch.* 616). (*School number three.*)

An Act to authorize the common council of the city of Rochester to raise money to provide for the deficiencies in the funds for the support of the public schools of said city. (*L.* 1894, *Ch.* 15. (*To pay outstanding bills to and including March* 31, 1894).

An Act to provide for the payment of certain claims against the board of education of the city of Rochester. (*L.* 1894, *Ch.* 124). (*To pay claims outstanding at commencement of fiscal year*, 1894).

An Act to authorize the city of Rochester to levy and collect a tax for the purpose of erecting a new public school building. (*L.* 1898, *Ch.* 57). (*School number twelve*).

An Act to authorize the common council of the city of Rochester to raise money for the purpose of purchasing sites and erecting new public school buildings thereon in such city. (*L.* 1899, *Ch.* 366). (*Buildings and sites not specified in act*).

An Act authorizing and directing the common council of the city of Rochester to cause to be issued bonds of said city, the proceeds of the sale thereof to be credited to the building fund of the board of education, for the purpose of erecting high school buildings. (*L.* 1901, *Ch.* 114).

Section 1. **High school bonds.** The common council of the city of Rochester forthwith, upon demand of the board of education of said city, shall from time to time cause to be issued bonds of said city in such amounts as are required by said board of education for the purpose of erecting high school buildings, the aggregate amount thereof not to exceed the sum of three hundred thousand dollars. Said bonds shall run for a period of ten years, and shall contain a provision that they may be redeemed at the end of five years, or thereafter, upon the payment of principal and accrued interest, and shall be sold, after competition upon sealed proposals at not less than par, and at a rate of interest not exceeding three and one-half per centum per annum.

§ 2. **Proceeds of bond sale.** The proceeds of the sale of said bonds shall be placed to the credit of the building fund of the board

of education of the city of Rochester. The sums so raised shall be in addition to the amounts otherwise required by law to be raised for the maintenance of the department of education of the city of Rochester. Pending the sale of any of said bonds the common council of the city of Rochester may borrow money for the purposes of this act, upon the promissory note or notes, or certificates of indebtedness of said city. (*As amended L.* 1952, *Ch.* 535).

§ 3. **Redemption fund** Until the bonds issued pursuant to the provisions of this act are paid and redeemed the balance of moneys hereafter appropriated for the maintenance of the department of education of the city of Rochester, and of school moneys appropriated to, or provided for, the city of Rochester remaining unexpended at the end of each fiscal year, shall be paid into, and be and constitute a fund for the redemption of the bonds issued pursuant to the provisions of this act. If such sum does not amount to the sum of thirty thousand dollars then the treasurer of the city of Rochester shall transfer to said redemption fund from the moneys appropriated the succeeding fiscal year for the maintenance of the department of education a sum which with such unexpended balance shall equal the sum of thirty thousand dollars. When any bonds issued pursuant to the provisions of this act become due they shall be paid from said redemption fund, and if there shall not be any or sufficient money in said fund to pay and redeem the bonds due the amount necessary to pay and redeem such bonds, after applying thereto the moneys in said redemption fund, if any, shall be paid by the city of Rochester.

§ 4. **When in effect** This act shall take effect immediately.

SEWERS

AN ACT TO PROVIDE FOR THE PAYMENT OF THE COST AND EXPENSE OF THE CONSTRUCTION OF A TRUNK SEWER ON THE EAST SIDE OF THE GENESEE RIVER, IN THE CITY OF ROCHESTER, BY THE ISSUE OF BONDS OF SAID CITY, AND PROVIDING FOR THE PAYMENT OF SAID BONDS BY LOCAL ASSESSMENTS. (*L.* 1891, *Ch.* 347).

Section 1. **Bonds**—The common council of the city of Rochester for the purpose of providing for the payment of the cost and expenses of the construction of a trunk sewer on the east side of the

Genesee river in said city, may, from time to time, authorize the city treasurer of said city to issue bonds of said city, in an amount not to exceed, in the aggregate, the sum of one million dollars; said bonds, when issued, shall be signed by the said treasurer and countersigned by the mayor and the president of the common council of said city. They shall be known as the east side trunk sewer bonds. They shall be issued in separate series of twenty-five thousand dollars respectively. The first of said series of twenty-five thousand dollars shall be made due and be payable in ten years from the date of issue, and the succeeding series of said bonds, shall be so made due and be payable that one of said series of said bonds, and only one shall fall due and be payable in each and every year following the year in which said first series of said bonds shall fall due and be payable. The city of Rochester shall have the privilege of paying any and all of said bonds at any time after ten years from the date of issue. Said bonds shall bear interest at a rate not to exceed four per centum per annum, payable semi-annually, on the first days of January and July in each year. The interest and principal of said bonds shall be payable in the city of New York. It shall be the duty of the city treasurer to keep a complete record of said bonds, including the date thereof, the number of each bond and series number, the time of maturity and to whom issued, if registered. The proceeds of said bonds shall be applied to the payment of the cost and expenses of construction of said trunk sewer. (*As amended L.* 1902, *Ch.* 741).

§ 2. **Sale of bonds**—Whenever the issue of any bonds by virtue of this act shall be authorized by said common council, said treasurer shall invite sealed proposals therefor by public advertisement for not less than ten days, and may award the same to the highest bidder therefor, provided that no proposal shall be accepted for less than the par value of said bonds; and said proposals shall be publicly opened only by the treasurer, or such other person as said common council may designate, in the presence of the finance committee of said common council or such of them as shall attend at the time and place specified in said advertisement, and said treasurer with the approval of said finance committee or such members thereof as may be present shall determine what, if any, part of said proposals shall be accepted; but nothing herein contained shall be construed to prevent the rejection

of any or all of said proposals; and said common council is further authorized, for the purpose of paying for the cost and expenses of carrying on the construction of any work now being done, pending the sale of any of said bonds, to borrow by a vote of three-fourths of all the members elected, subject to the approval of the mayor, upon the credit of the city, by its promissory note or notes, payable in not more than a year after their date, so much money as may be deemed necessary, and the amount so borrowed shall be placed to the credit of the east side trunk sewer fund, to be refunded with interest from the proceeds of the sale of said bonds. (*As amended L.* 1894, *Ch.* 410.

§ 3. **Payment of interest** The interest on all bonds issued by virtue of this act, shall be paid by the city treasurer out of the contingent fund of said city; which said fund shall be reimbursed for moneys so expended by provision as hereinafter contained. For the purpose of providing the contingent fund with moneys sufficient to meet the payment of said interest, the common council may, whenever necessary, authorize the city treasurer to borrow money in anticipation of the assessment hereinafter directed to be made on the city's note. Such note may be renewed from time to time, but only until moneys sufficient to pay the same have been realized from said assessment.

§ 4. **Assessment**—For the purpose of meeting the payment of said bonds as they become due, and of reimbursing the contingent fund for moneys expended for the payment of interest on said bonds and for all costs and expenses of discounting the city's notes for the payment of said interest, the common council, in the year eighteen hundred and ninety-eight, shall pass a resolution declaring the part or portion of the city which they deem benefited by the construction of said trunk sewer, and which they deem proper to be assessed therefor, which part or portion of the city, however, shall be entirely on the east side of the Genesee river, in said city. They shall estimate and declare the amount of money necessary to be raised to meet the payment of such of said bonds as will fall due in the next succeeding five years, and the amount of money necessary to be raised to reimburse the contingent fund for moneys theretofore expended, or to be expended for interest during the same period, on any and all bonds

issued by virtue of this act, and all cost and expenses of discounting the city's notes theretofore and during said period for the payment of said interest, and they shall declare that the amount so estimated and declared shall be raised by assessment on the property which they have determined to be benefited. They shall determine and declare that the assessment to be made shall be paid in not more than five equal payments, one within thirty days from the time that the treasurer advertises the same, as hereinafter provided for, and the balance in one, two, three and four years, respectively, from the confirmation of the assessment roll. Said common council is hereby authorized to employ such assistance as may be necessary for the preparation of said assessment, and the cost and expenses thereof, except the salary of the assessors, shall be assessed from time to time as said common council may deem proper, upon the territory declared to be benefited as above provided. (*As amended L.* 1898, *Ch.* 585).

§ 5. Repealed. (*L.* 1892, *Ch.* 74, § 3).

§ 6. **Order of assessment**—The common council shall thereupon make an order reciting the amount of money to be raised by such assessment as aforesaid, and, thereupon, the city assessors shall make an assessment upon all the lots and parcels of land within the portion or part so designated, of the amount of money to be raised, in proportion, as nearly as may be, to the advantage which each may be deemed to receive by the making of such improvement, which order shall be certified to by the clerk of the said city, and delivered to some one of the said assessors. (*As amended L.* 1892, *Ch.* 74).

§ 7. **Oath of assessors**—It shall be the duty of the said assessors to meet together at such time and place as may be agreed upon by them and thereupon severally to take and subscribe an oath, before some officer authorized to take affidavits to be read in courts of record, that they will faithfully and impartially discharge the duty imposed upon them by said order, which oath shall be forthwith returned and filed by the city clerk.

§ 8. **Assessment roll; how made**—The said assessors, having taken their oath, shall proceed to make an assessment according to the said order, and shall make out an assessment roll, in which shall be entered the names of the persons assessed, so far as they can

ascertain the same, the value of the property for which they are assessed and the amount assessed to them respectively, with a brief description of the lots or parcels of land so assessed. A designation of the lots or parcels of land so assessed, by any description sufficient to distinguish the same, shall be sufficient in making said assessment roll, without regard to the names of the owners or occupants.

§ 9. Repealed. (*L. 1892, Ch. 74, § 5*).

§ 10. **Objections to assessment roll**—Immediately after such assessment shall have been completed, the said assessors shall determine the time and place where they shall first meet to hear the allegations and objections of all persons interested in said assessment, of which, at least, ten days previous notice shall be given by publication in a daily newspaper of said city.

§ 11. **Presentation of roll to common council; confirmation**—At the time and place designated in such notice, the assessors, or a majority of them, shall meet and hear such allegations and objections, and the assessment books shall then be open for examination and inspection of all parties interested. The assessors may adjourn from time to time, as may be deemed necessary, and they shall amend and correct such assessment as they may deem proper. When completed, the assessment roll shall be certified and sworn to by said assessors, or a majority of them, and shall be delivered to the clerk of said city, who shall report the same to the common council at its next meeting. Upon such return being made, filed, and so reported, the common council shall proceed to hear allegations against, or appeals from, the said assessment, and may correct, confirm, set aside, or refer to a committee appointed by it, or order a new assessment to be made. If the same shall be referred to a committee, the said committee may proceed to hear allegations or objections upon five days notice by publication, or may, without such notice of hearing, examine and report to the common council, who shall, thereupon, proceed to correct, confirm, or set aside said report, or order a new assessment.

§ 12. **Completion of assessment**—Upon confirmation by the common council, the said assessment shall be final and conclusive. It shall be sufficient, in said assessment, to designate the owners or

occupants of the lots or parcels of land intended to be assessed either by name or as unknown, or to describe said several lots and parcels of land by any description by which they may be respectively distinguished. Said assessment, so made, shall create a personal obligation or liability against the owner of the lot or parcel of land assessed to pay the city of Rochester the amount of such assessment, for the collection of which, together with interest, cost and expenses, said city may maintain, in its own name, an action in any court of competent jurisdiction, in addition to any other remedies herein provided for the collection thereof.

§ 13. **Notice by city treasurer of receipt of roll**—Whenever the assessment is confirmed by the common council, the assessment roll shall be delivered to the city treasurer, whose duty it shall be to give five days public notice, by advertisement, in two daily papers printed in said city, of the receipt of such roll, requiring the persons assessed or the owners or occupants of the lots assessed, to pay the assessment to him, at his office, the first installment thereof within thirty days from the first publication of said notice, and the balance thereof in installments in one, two, three and four years respectively.

§ 14. **Warrant of city treasurer for collection of assessment**—If such assessment, or any installment thereof shall not be paid when the same becomes due, the city treasurer shall issue a warrant therefor with interest thereon at the rate of six per centum per annum, from the time when due, besides collector's fees.

§ 15. **Warrant of collector; report of unpaid assessment** The city treasurer shall issue his warrant as aforesaid, to a collector, commanding him to collect the amount unpaid on such assessment, with interest and fees, as aforesaid, and shall annex to such warrant, either a list of such assessments taken from the assessment roll, or the roll itself; said warrant shall be under his hand, and directed to any person whom he may see fit to appoint a collector of the assessment specified in such warrant, commanding such person, as such collector, to collect the amount of said assessment, or the portion then due, and an additional amount of five per centum, except that in no case is the amount so added to be less than twenty-five

cents, and also interest thereon at the rate of six per centum per annum from the date at which said assessment, or installment thereof, became due, and to pay the same to the city treasurer, and return such warrant within twenty days after the date thereof. Every collector shall hold his appointment during the pleasure of the treasurer, and may, at any time be suspended or removed, and the treasurer and his sureties shall be liable for any collector, and for all money that may be collected or received by him. In case any assessment shall have become entirely due, and the whole, or any part thereof, remains unpaid, and a warrant shall have been issued therefor, and returned unsatisfied, it shall be the duty of the city treasurer to report the same to the city assessors. The said city assessors, in preparing the next roll for general city taxes, shall insert therein against the property on which it was assessed, the amount of such unpaid assessment, with interest thereon, at the rate of six per centum per annum, down to the confirmation of said roll, and on the confirmation of said roll, the said assessment shall become and be a part of the general city taxes of said property. When such tax is collected, the treasurer shall credit the portion thereof which was due on any assessment to the proper fund.

§ 10. **Validity of assessment; lien on lands, etc.; re-assessment**—Every tax or assessment authorized by this act which has been assessed upon any lands or tenements, or real estate, or upon the owners or occupants thereof, shall be, and is hereby declared valid and effectual, notwithstanding any irregularity, omission or error in any of the proceedings relating to the same, and shall be, and remain, a lien on such lands, tenements or real estate, on which, or in respect to which, the same have been made, from the time of the confirmation of the roll containing the same, and until the same shall be actually paid or satisfied. In case any assessment shall remain unpaid on account of any irregularity, omission or error in any assessment or in the proceedings relating thereof, or in case of error in description of lands, tenements or real estate, or in designation of owners or occupants, the common council may, in their discretion, proceed to correct such irregularity, omission or error, and cause the amount so unpaid to be re-assessed on the property deemed to be benefited by such improvement or upon the owners or occupants thereof, and the common council are hereby authorized

and empowered to have such re-assessment made in the same manner as the original assessment should have been made; and such assessment shall have the same effect as if the assessment had originally been properly made.

§ 17. **Estimates of common council to pay bonds**—In each fifth year, after the year in which the first assessment herein authorized is made, the common council shall estimate and declare the amount of money necessary to be raised to meet the payment of such of said bonds as will fall due in the next succeeding five years, and the amount of money necessary to be raised to reimburse the contingent fund for moneys expended, or to be expended, for interest during the same period, and costs and expenses of discounting notes in payment of the interest on any and all bonds issued by virtue of this act, and what part or portion of the city which they deem benefited by the construction of said trunk sewer, and which they deem proper should be assessed therefor, which part or portion of the city, however, shall be entirely on the east side of the Genesee river in said city, and shall direct an assessment to be made on the said part or portion of the city; and the said common council shall make similar orders, and pass similar resolutions, and similar proceedings shall be had in reference to each succeeding assessment as was had in the first assessment and all proceedings herein, and reference to the first assessment, shall be equally applicable to each succeeding assessment. And assessments, as herein provided for, shall be continued until all of said bonds shall have been redeemed and paid off, and until the said contingent fund shall have been entirely reimbursed for all moneys expended from it, for payment of interest on the bonds authorized by this act.

§ 18. **Appointment of commissioners; bond; compensation**—Within thirty days after the final passage by the common council, and approval thereof by the mayor of said city, of an ordinance for the construction of said sewer, or any part thereof, the said common council shall appoint three commissioners, who shall be residents and taxpayers on the east side of the Genesee river in said city, to act with the members of the executive board of said city in all matters pertaining to said trunk sewer. In case of the appointment of commissioners, the said commissioners so appointed, and each of them, shall, within five days after being notified of their appoint-

ment, take the oath of office required to be taken by the members of the said executive board: they shall each give a bond, in such amount and with such sureties as the mayor of the city may approve, conditioned for the faithful performance of their duties, and they shall have the same powers, and be subject to the same duties and responsibilities, in reference to all matters pertaining to the said trunk sewer, as the said members of said executive board. In case of the death, resignation or inability to act of any of said commissioners, the common council shall have power to fill the vacancy. The said commissioners shall receive as compensation for their services the sum of five dollars per day each, for each day actually and necessarily spent in performing duties pertaining to their office as such commissioners but such compensation shall not exceed, in the aggregate, the sum of one thousand dollars per year to each of said commissioners. Said commissioners and executive board shall be known by the name of "the east side trunk sewer commission," in which name they may let all contracts, or do any other act, in reference to said sewer, which may be done by the executive board in regard to any improvement, and sue for and collect any penalties, claims or demands under any of said contracts, or concerning said east side sewer. On July first, eighteen hundred and ninety-eight said commissioners shall file with the clerk of the executive board of said city the record of their proceedings together with their books of account and all contracts and other papers relating thereto which shall be kept by said clerk as a part of the records of said city of Rochester: and copies of the same certified by said clerk shall be *prima facie* evidence thereof in all courts and places. They shall turn over to the treasurer of the city of Rochester all check and bank books and all moneys on hand belonging to said city, and said treasurer shall keep said books as a part of the records of his office and shall deposit the said moneys to the credit of the east side trunk sewer fund, and thereafter the duties of said commissioners under said act shall devolve upon and be discharged by the executive board of said city, or its successors who shall thereupon become vested with all the powers of said commissioners under said act. (*As amended L.* 1898, *Ch.* 585).

§ 19. **Application of city charter in certain cases** Where provision is not made in this act for any part of the making, levying or collection of the assessments directed by this act, such action shall

be had and taken in reference to said making, levying or collection of said assessments as is directed to be had and taken by the charter of said city in reference to the assessments for local improvements.

§ 20. **When in effect** This act shall take effect immediately.

An Act to authorize and provide for the construction of a sewer in the tenth, fifteenth and twentieth wards of the city of Rochester, and in the town of Gates, in the county of Monroe. (*L.* 1892, *Ch.* 603).

Section 1. **Appointment of commissioners to determine necessity of sewer** Upon the presentation of a petition, duly verified by five or more freeholders in the tenth, fifteenth, and twentieth wards of the city of Rochester, or in the town of Gates, in the county of Monroe, to the county court of Monroe county, praying for the appointment of a commission to ascertain and report whether a sewer, upon substantially the following route, namely: beginning at the intersection of the Buffalo road and Field street; thence running east on said Buffalo road and West avenue to Kossuth street; thence north to Maple street; thence to Deep Hollow creek; thence through and along Deep Hollow creek to, and into the Genesee river, is necessary for the protection of the public health, the said county court shall appoint a commission of three persons, who shall be residents and freeholders in said county, to hear and determine whether it is necessary for the public health that such sewer be constructed.

§ 2. **Oath and duty of such commissioners** The said commissioners shall, before they enter upon the duties of their office, make and file an oath with the clerk of said county, that they will faithfully discharge the duties of their office according to the best of their knowledge and ability. A majority of the commissioners present at any meeting, of which all have had notice, may exercise the power of the commission. The said commissioners shall proceed, by personal view of the land and otherwise, to determine whether it is necessary for the public health that such sewer shall be constructed. They shall appoint a time and place for the first hearing of proofs

and taking of evidence, touching the necessity for such sewer, and of which public notice shall be given, for at least ten days, in two of the daily newspapers published in the city of Rochester. Such hearing may be adjourned from time to time as is necessary, and at any of such hearings any person interested may appear and give evidence bearing upon the question, whether said sewer is necessary for the protection of the public health. After having heard the proofs and allegations produced before them, the said commissioners shall with all convenient speed, file in the offie of the county clerk of said county their determination, signed by them, or by a majority of them, if they do not all concur, as to the necessity of such sewer for the protection of the public health, together with the proofs, or evidence taken by them. Notice of their determination, and the time of filing of the same, shall be published in at least two of the daily newspapers of the city of Rochester.

§ 3. **Appeals; confirmation of report; discontinuation of proceedings; witnesses; pay of commissioners.**—Anybody feeling aggrieved by the determination of the commissioners, that said sewer is necessary for the protection of the public health, if such shall be their determination, may appeal from such determination to the county court, by giving written notice of such appeal to said commissioners within ten days after such determination shall have been filed in the office of the clerk of said county, and notice thereof published as aforesaid. In case an appeal is taken from such determination, the said court shall, upon motion of any party, on at least ten days notice given in writing to the party appealing, or by the party appealing to said commissioners, proceed to hear said appeal upon the report of said commissioners, and the proofs and evidence filed by them. If no appeal is taken from the determination of said commissioners, as herein provided, or if an appeal is taken and the decision of said commissioners is sustained by said court, an order shall be entered in said court confirming said report, and a certified copy thereof attached to said report, which shall be filed and preserved as a judgment-roll in the matter of such proceeding. If the commissioners shall report that such sewer is not necessary for the public health, no further proceedings shall be had thereon. The attendance of witnesses in such proceeding, before such commissioners, may be compelled as in civil actions in the county court, with

like fees. The commissioners shall be entitled to five dollars a day for the time necessarily spent in the hearing and determination of such matter.

§ 4. **Appointment of commissioners; organization; bonds**—If said commissioners shall report that such sewer is necessary for the public health, and such report shall be confirmed by the county court of said county, said court shall thereupon, upon the application of the city attorney of the city of Rochester or of any other person alleged to have an interest in the matter of said sewer, appoint three persons resident within the county of Monroe, residing in the city of Rochester, or in the town of Gates, one of whom shall be an attorney-at-law, as commissioners of sewerage under this act; and the persons so appointed are authorized and empowered to lay out and construct a sewer of such dimensions and of such materials, and in such manner, as in their judgment shall be proper, between the points and upon, substantially, the route above specified. Said commissioners shall be known as commissioners of sewerage for the tenth, fifteenth and twentieth wards in the city of Rochester, and the town of Gates. They shall, before they enter upon the duties of their office, make and file an oath of office, with the county clerk of the county of Monroe, that they will faithfully discharge the duties of their office to the best of their knowledge and ability. A majority of the commissioners present at any meeting, of which all shall have notice, may exercise the powers of the commission, except as to those matters which by the provisions of sections five, six and seven hereof are to be performed by said commissioners in conjunction with the two other commissioners as provided for in said sections. They shall with all convenient speed after qualifying as herein provided, meet and organize by appointing one of their members chairman, one treasurer and one secretary of the commission. Any two of the said offices may be held by the same person. The treasurer shall, during the continuance of said commission, collect and be the custodian of all moneys to be collected or received by the commissioners under the provisions of this act, and he shall pay out the moneys so received only upon the orders of the commissioners, signed by at least two of their number. The treasurer shall before he proceeds to collect any of the moneys, give a bond to the people of the state of New York in such an amount and in such sureties as shall be approved by

a justice of the supreme court in the seventh judicial district, or by the county judge of Monroe county, conditioned for the faithful performance of the duties of his office, and file the same in said clerk's office. Any person may apply to any justice of the supreme court of said district, or to the judge of Monroe county, upon an affidavit showing the necessity therefor, for an order requiring said treasurer to show cause why an additional bond should not be filed, and upon the service of such order on said treasurer he shall not collect any more money until said justice or judge shall determine upon such application. Said judge or justice shall have the right to require such additional bond as to him shall seem necessary. Said justice or judge may accept a bond, guaranteed by some duly incorporated guaranty company, as a compliance with this statute. Said county judge of Monroe county may, at any time, upon the application of the city attorney of said city or any person interested in the matter, remove said commissioners, or either of them, or any of their successors, for cause shown, after an opportunity shall have been afforded to the commissioner or commissioners sought to be removed, to answer such charges; and may also, at any time supply any vacancy in such commission, occasioned by death, resignation, or otherwise; except that any vacancy for any reason in the office of the two commissioners hereinafter provided for and to be appointed by the town board of the town of Gates, shall be filled by appointment by said town board. (*As amended L.* 1895, *Ch.* 438).

§ 5. **Course of sewer; survey and map; civil engineers**—Said commissioners shall, in conjunction with two additional commissioners, who shall be appointed by the town board of the town of Gates, within ten days after the passage of this act, and who shall be residents of the county of Monroe, and who shall, before entering upon the duties of their office, make and file the above prescribed oath of office with the clerk of Monroe county, and shall thereupon be vested with all powers prescribed herein and in said chapter six hundred and three of the laws of eighteen hundred and ninety-two equally with the other commissioners therein provided for, except as hereinafter stated, proceed forthwith, by personal view of the lands and otherwise, to determine the exact course of said sewer; and the lands through which the same shall be constructed; and the several parcels of lands to be benefited thereby; and they shall cause

an accurate survey of all such lands, and a map thereof shall be made, showing the course and extent of said sewer, as determined by them; and showing the several parcels of land that are proposed to be drained, and the several parcels or tracts determined by them to be benefited by such drainage, together with the names of the owners or occupants thereof, so far as the same, with reasonable diligence, can be ascertained by them; and the size of said sewer proposed to be constructed, and which they shall determine to be necessary for the drainage and sewerage of such lands; and they are hereby authorized and empowered to employ a competent civil engineer with such assistants as shall be deemed necessary to act as such in such determination, and said commissioners and said civil engineer and his assistants are authorized and empowered to enter upon any and all of the lands deemed necessary by said commissioners, and to survey the same and take the levels thereof, and to do all things necessary for the construction of such sewer, as they shall deem necessary for the drainage and sewerage of the land so surveyed by them. (*As amended L.* 1895, *Ch.* 438).

§ 6. **Filing of maps; acquiring title to lands.** The said commissioners shall, upon the completion of said survey, and before the construction of said sewer, cause said map to be certified by them, with a statement written thereon, signed by them, or a majority of them, that they have determined that the sewer laid out upon said map, is necessary to drain and sewer the lands specified thereon, and should be constructed in or through such lands as necessary for the public health, to be filed in the office of the clerk of the county of Monroe; and all lands, easements, right of way, in, through or over the same, acquired under the terms of this act, shall be deemed and taken for public use, and for the benefit of the public health; said map, or a certified copy thereof, may be used in evidence in any suit or proceeding in this state. For the purpose of this act said commissioners may use and occupy any of the streets, highways, alleys, or other public places in said wards or town, and they may take and appropriate such lands and such real estate as they may deem proper for such purpose. In case said commissioners shall be unable to agree with the owner or owners of any lands or real estate taken by them for the purposes aforesaid, or any right or easement thereon

upon the compensation or damage to be paid therefor, they may apply to the supreme court, under the condemnation law, for the acquirement of such lands, easements or rights of way.

§ 7. **Costs and expenses; assessment roll.**—Said commissioners shall, before entering upon the construction of said sewer, ascertain and determine, as nearly as may be, the cost and expense thereof, including damages and compensation to be made for lands or right of way taken, including interest at six per centum per annum upon all installments payable after thirty days from the filing of the assessment roll, hereinafter referred to, which statement shall be verified by said commissioners or a majority of them, and shall apportion the costs so ascertained upon the several tracts or parcels of land included in said map, situate and being within the wards of the city of Rochester, or the town of Gates, in the county of Monroe, and the owner or occupants thereof, if ascertained, as they shall deem to be benefited by such sewer in proportion to the amount of benefit which each shall be deemed by said commissioners to receive therefrom. Such apportionment shall be in the usual form of an assessment roll and shall specify the names of the owners or occupants of the lots or parcels of land intended to be assessed, if known, or shall describe said lots and parcels of land by any description that shall fairly distinguish the same, without reference to the owners or occupants, which said assessment roll shall be signed by at least four of said commissioners and no determination of the several parcels of land to be benefited as aforesaid, and no apportionment of the cost so ascertained upon the several tracts or parcels of land included in said map or on said assessment roll shall be valid unless concurred in by four of the said commissioners, all other acts hereinbefore and except as hereinafter provided for in sections five, six and seven may be done by said commissioners or a majority of said five commissioners. After such assessment shall have been completed, the said commissioners shall meet at some place designated by them in the city of Rochester, to hear the allegations and objections of all persons interested in the assessment, of which at least ten days previous notice shall be given in at least three daily newspapers published in said city, one of which shall be a German newspaper, by the publication of said notice in each issue of said newspaper. The said commissioners shall, at the time and place specified in said notice,

and for a period of thirty days from such time, hear the allegations and objections of such persons interested in said lands as shall appear before them. Said assessment roll shall there be open to the examination and inspection of all persons interested, between the hours of nine in the morning and five in the afternoon, from and after the last publication of said notice until the last day for hearing allegations in reference thereto. After such allegations are closed, said commissioners shall proceed to review said assessment and are hereby authorized to make such corrections therein as they may deem proper and may decrease or increase any assessment made by them to such an amount as to them shall seem fair and equitable. But no correction, increase or decrease of any assessment made by them shall be made without the concurrence of four of said commissioners. And when said review shall be completed by said commissioners the same shall be verified by the oath of at least four of said commissioners by whom it is made to the effect that the same is in all respects just and true to the best of their judgment and belief. When such assessment roll shall be completed the same, or a copy thereof, shall be filed with the clerk of Monroe county, whereupon the duties and powers herein conferred upon the two commissioners appointed by the town board of the town of Gates shall cease unless a re-assessment or re-assessments shall be required to be made as provided in section twelve of said chapter six hundred and three of the laws of eighteen hundred and ninety-two, or for any reason or purpose, whereupon said commissioners so appointed by the town board of the town of Gates shall have the same powers upon any re-assessment as are herein given for the purpose of said original assessment. From the time of filing, said assessment roll shall be and remain a lien and charge upon the lands against which it is made, until fully paid or otherwise discharged, and shall also create a personal obligation or liability against the person assessed and who is the owner of any lot, to pay said commissioners the amount of such assessment, for the collection of which, together with the interest, cost and expenses, said commissioners may maintain in their name as commissioners an action in a court of competent jurisdiction in addition to any other remedies herein provided for the collection thereof. Notice of the filing of such completed assessment roll and of the place where the assessments levied therein are payable shall be published at least five times in three of the daily newspapers of the City of Rochester, one of which shall be a German newspaper,

immediately after the filing of such roll. Such assessment shall be made payable as follows, namely: One-fifth in thirty days after the completion of the notice of the filing of said assessment roll, and the balance in eight annual installments thereafter, including the interest thereon. Any person who is assessed as hereinbefore provided may prepay the whole or any part of his assessment, and upon such prepayment shall be entitled to a rebate or discount on the amount so prepaid at the rate of six per centum per annum for the period between the date of payment and the date when such payment would become due. At the expiration of the said thirty days from the completion of the notice of the time of filing such assessment roll said commissioners may issue their warrant for the collection of any installment of such assessment then remaining unpaid and due, together with interest thereon at the rate of six per centum per annum, together with five per centum as fees for the collection of the same, which warrant may be issued to any collector or collectors appointed by said commissioners to collect such assessment, and shall be returned in not less than thirty days from the date of issue of the same; such collector or collectors shall proceed to collect such assessments in the manner provided by law for the collection of taxes in the city of Rochester, and shall, upon the return day of said warrant, return the same to such commissioners, with their proceedings thereon. Upon the filing of said completed assessment roll the assessment roll heretofore made by the commissioners, Horace G. Pierce, Frank S. Upton and George B. Swikehard, pursuant to chapter six hundred and three of the laws of eighteen hundred and ninety-two, and filed in Monroe county clerk's office on the thirty-first day of July, eighteen hundred and ninety-three, shall be and the same is hereby vacated and canceled, and the lien of the same upon any parcels of land in the town of Gates or in the city of Rochester is hereby discharged, except that nothing herein contained shall impair in any manner the rights of any holder of certificates or evidence of indebtedness heretofore issued by said commissioners pursuant to said act. But any such certificate so issued shall be paid out of the funds raised by the assessment hereinbefore provided for, and shall be treated and have the same force and effect as any certificates hereafter issued by said commissioners. Any payments heretofore made, or that hereafter may be made, on such former assessment roll shall be credited upon the assessment above directed to be made, with interest from the time of any such payment;

if the re-assessment shall be less than the amount paid, the excess shall be applied on future installments, if such there be; if there are none, then the same shall be returned to the payor or to any person who has succeeded to his rights. (*As amended L.* 1895, *Ch.* 438).

Note—L. 1893, Ch. 308, provided as follows: "All persons assessed for the construction of a sewer in the tenth, fifteenth and twentieth wards in the city of Rochester, and town of Gates, in Monroe county, in pursuance of section seven, chapter six hundred and three of the laws of eighteen hundred and ninety-two, entitled, "An act to authorize and provide for the construction of a sewer in the tenth, fifteenth and twentieth wards in the city of Rochester and in the town of Gates, in the county of Monroe," shall be entitled to a credit upon the second and third installments of the assessment provided for in said section seven of said act as follows: Upon one-half of said second and third installments respectively of two years, so that the said assessment at the option of the taxpayers shall be payable in four equal parts extending through one, two, three and four years from the time of filing said assessment roll and notice, as provided in said section; provided, however, that interest upon such deferred payments at the rate of six per centum per annum shall be chargeable upon such payments for the time of such extended credit, and all the provisions of said section seven as to the collection of said assessment shall be applicable for the payments for which credit is given. Nothing herein contained shall prevent any person assessed from availing himself of the rebate or discount, provided for in said section by paying up the whole amount of said assessment at the time provided for in said section."

Injustice in method of assessment for sewer is not subject to collateral attack by action. All the acts relating to the west side trunk sewer collated and discussed—McKee Land Co. vs. Williams, etc., 68 App. Div. 353; affirmed without opinion, 173 N. Y. 630.

§ 8. **Sale of lands for unpaid assessments.** In case any assessment is returned by said collector or collectors, as uncollected, the said commissioners shall proceed to make a proper description of the land on which such unpaid assessments are laid, and cause a notice of such assessments and description of the several parcels of land upon which the same are laid, to be published twice a week for six successive weeks, in two or more of the daily newspapers published in said city of Rochester, together with a notice that if the said assessments, the interest and fees thereon, are not paid, with the expense of advertising, on or before a day to be named therein, which shall not be less than six weeks from the first publication thereof, the lands so described will be sold at public auction on the day and hour and at the place named in said notice, to the person or persons who will

take them for the shortest period of time and pay the assessment and expense incurred thereon, respectively, with interest. On the day designated, or such other day to which the said sale may be adjourned, the said premises shall be so sold, and the said commissioners on receiving the amount of said assessment, fees, interest and expense, shall give to the purchaser or purchasers thereof, a certificate of such sale, duly acknowledged, which certificate shall be presumptive evidence of all the facts stated therein, and may be recorded in the clerk's office of Monroe county as the evidence of mortgaged sales is authorized to be recorded. If at such sale, no bid to the amount of the assessment thereon and expense of sale shall be made for any such parcel of land, the same shall be struck off to said commissioners as such, and they shall make a memorandum of the fact that the land was so struck off, in a book to be kept by them for that purpose, and whenever any such lands have been struck off to such commissioners, they shall as such commissioners, acquire a title to such lands in fee, clear of claim or demand from any owner thereof, or any person having any lien thereon, or interest therein, except the county of Monroe and the city of Rochester, for any unpaid tax or assessment, unless the same shall be redeemed as hereinafter provided.

§ 9. **Redemption of lands**— The owner, mortgagee, occupant, or any other person interested in and entitled to redeem lands sold on execution, may at any time within one year from the date of such sale, redeem the land so sold, as provided for in this act, by paying to the purchaser at such sale, or to the treasurer of said commission, for his or their use, the said purchase money with ten per centum in addition thereto; and a certificate of said treasurer stating the payment and showing what land the payment is intended to redeem, shall be evidence of such redemption, and may be filed in the county clerk's office of Monroe county. The same proceedings may be had upon the coming due of any installment of said assessment, after the first, as herein provided for, in case of such first installment.

§ 10. **Contracts for construction; security; bonds to secure laborers' wages**—Said sewer shall be constructed by contract, and said commissioners are hereby authorized and empowered to make all necessary contracts therefor, and a contract for the construction of the same in such sections or parts as they shall determine.

All contracts where the price or amount shall exceed one hundred dollars shall be made only after advertising for and receiving proposals as hereinafter specified. Such advertisement shall be published for ten days in at least two daily newspapers published in the city of Rochester. Said commissioners shall have the power to reject all bids or proposals, if, in their judgment, it is expedient so to do, and may further advertise for proposals as often as they shall deem necessary. They shall require any and all persons with whom they contract, as aforesaid, for the construction of said sewer, or any part thereof, to give sufficient security, to be approved by said commissioners in double the amount of the contract price, conditioned for the faithful performance of the said contract, and with the further condition that the said contractor will pay all damages and expenses incurred by any person, association or corporation, by reason of the default, or wrongful or negligent act of said contractor, his agents or servants, in or about the execution of his contract; and promptly restore to its former condition the surface of any highway, street or other place necessarily excavated or obstructed in the execution of his contract; and pay or cause to be paid the wages and compensation of all laborers who shall be employed in working on or about the improvements mentioned in said contract. Actions on such bond or undertaking may be brought by or in the name of a laborer or laborers claiming to be secured thereby, or his or their assignee; and separate actions may be brought by each and any number of such laborers or their assignees. No action or proceedings, however, shall be commenced upon such bond or undertaking after six months from the date when the cause of action accrued.

§ 11. **Certificates of indebtedness** Such commissioners are hereby authorized and empowered to issue, as such commissioners, certificates or evidence of indebtedness bearing interest at the rate of six per centum per annum, in payment of any lands, easements, rights of way, work, material or other expenses which shall have been or are to be incurred in or about the construction of said sewer, which certificates or evidence of indebtedness shall be receivable in payment of such assessments at their face value, with accrued interest. The common council of the city of Rochester is hereby authorized and empowered to guarantee or secure the payment of such certificates in such manner as it shall

deem best, to the amount of one hundred and fifty thousand dollars, or the said common council may issue the bonds of said city at a rate of interest not to exceed four per centum, to the amount above specified, payable at such time as the said common council shall determine, and which shall be sold in the manner to be determined upon by said common council as most advantageous to the interest of said city of Rochester, and the proceeds of said bonds shall be invested in the certificates issued by said commissioners and expended in the construction of said sewer and the expenses attendant thereon, entirely within the limits of said city of Rochester. And the board of supervisors of the county of Monroe is hereby authorized and empowered to issue its bonds, or guarantee or secure in such manner as it shall deem best, the payments of the certificates issued by said commissioners, to the amount of seventy-five thousand dollars; or the said board of supervisors may issue and dispose of the bonds of said county in the manner as above provided for the issuing of bonds by the said city of Rochester, but the avails of said bonds shall be used in the construction of said sewer entirely in said town of Gates. (*As amended L.* 1895, *Ch.* 438).

§ 12. **Assessment for deficiencies**—In case the said commissioners shall at any time determine that the amount levied and collected by the assessment hereinbefore provided for, is insufficient to defray the expense of completing said sewer; and said commissioners record in their proceedings a resolution to that effect, specifying the amount, in their opinion, of such deficiciency, the said commissioners are authorized to levy a further assessment or assessments from time to time, as shall be necessary to defray such expenses, the proceedings in reference to which shall be in all respects, as far as practicable, the same as hereinbefore provided for in the first or original assessment.

§ 13. **Certificate of indebtedness in anticipation of assessments**. In case such commissioners shall deem it necessary to raise funds for the construction of said sewer, before the assessment hereinbefore provided for can be made and collected, the said commissioners are hereby empowered from time to time to borrow so much money as, in their opinion, may be necessary therefor, and to issue evidence of indebtedness in such sums and form as they may

deem proper, bearing interest at the rate of six per centum per annum, payable semi-annually the principal thereof payable in not more than ten years. Such certificates of indebtedness shall be negotiable by delivery, and shall be receivable in payment of any assessment levied by such commissioners; and the interest thereon shall be assessed as a part of the expense in the construction of said sewer.

§ 14. **Records**—Said commissioners shall keep a record of their proceedings in a book or books to be provided for that purpose, and shall also keep an account in proper account books of all moneys collected or disbursed by them. They shall, annually, on or before the fifteenth day of January in each year, file with the Monroe county court a full and complete statement of all their financial transactions and the dispositions of all moneys received by them under and by virtue of said chapter six hundred and three of the laws of eighteen hundred and ninety-two, or of this act, which reports shall be verified by the oath of said commissioners and shall be duly examined and audited by said Monroe county court. (*As amended L.* 1895, *Ch.* 438).

§ 15. **Personal liability**—Neither of the commissioners mentioned in this act shall be liable personally upon any contract made or certificate of indebtedness issued by him or them, as such commissioner or commissioners, nor for any act done by him or them under the provisions of this act unless such act shall be a willful and intentional wrong on his part. (*As amended L.* 1895, *Ch.* 438).

§ 16. **Compensation of commissioners**—The commissioners appointed by and under chapter six hundred and three of the laws of eighteen hundred and ninety-two, or by and under this act shall for each day actually and necessarily spent by them in performance of their duties as such commissioners receive the following compensation: The commissioner, who is a lawyer, appointed under said chapter six hundred and three, ten dollars, and each of the other commissioners five dollars; and in no case shall the annual compensation of any commissioner exceed for the commissioner who is a lawyer two thousand four hundred dollars, and the commissioners who are not one thousand two hundred dollars each. No commissioner shall be directly or indirectly interested in

any contract with reference to the construction of said sewer, as principal, surety or otherwise, except as such commissioner. (*As amended L. 1895, Ch. 438*).

§ 17. **Correction of irregularities**—In case any assessment shall remain unpaid on account of any irregularity, omission or error in any of the proceedings relating thereto, or in case of error in the description of the lands, or the designation of the owner or occupants, said commissioners shall proceed to correct such irregularity, omission or error in such assessment roll when discovered, and such correction shall have the same effect as if the assessment had originally been properly made.

§ 18. **Pay of commissioners to determine necessity of sewer**—The commissioners in this act first provided for, shall be entitled to receive five dollars per day for each day spent in the discharge of their duties, which shall be paid by the party taking up their report, and if their report is that such sewer is necessary for the public health their fees and the expenses of the witnesses attending before them shall be reported by them to the commissioners secondly provided for herein, and shall be levied and collected as a part of the expense of constructing the sewer herein provided for.

§ 19. **Provision for payment of commissioners of sewerage and engineers**—The compensation of the commissioners herein secondly provided for; of the engineers and their assistants employed to make the surveys and maps; all expenses for necessary clerical force and stationary,* for advertising, and all other expenses necessarily incurred in carrying into effect the provisions of this act, shall be deemed a part of the expense for the construction of said sewer, and shall be collected by assessments, as hereinbefore provided.

§ 20. **Record to be filed; duties of treasurer**—Upon the completion of said sewer the said commissioners shall file with the treasurer of the city of Rochester the record of their proceedings together with their books of account and all contracts and papers relating thereto, and copies of the same certified by said treasurer under his hand and official seal shall be *prima facie*

*So in the original.

evidence thereof in all courts and places. They also shall turn over to said treasurer the moneys on hand, the assessment roll and all uncollected assessments and papers connected therewith, and he shall from and after that time discharge all duties and possess all powers imposed upon or vested in the treasurer of said commission by virtue of the provisions of this act and of chapter six hundred and three of the laws of eighteen hundred and ninety-two. All the powers vested in said commissioners with reference to the issuing of warrants for the collection of assessments and the collection of the same and the sale of lands in default of payment thereof shall be vested in said treasurer. He shall give a bond in the penalty fixed by the common council of the city of Rochester, and in the form and with sureties to be approved by it, for the faithful performance of his duties herein and shall have power to employ a competent person to keep books and make the collections necessary and shall receive therefor out of said sewer funds a sum to be fixed by said common council, not to exceed fifteen hundred dollars annually for his said service and the clerk hire not, however, to extend beyond six months after the last installment of said assessment shall become due, and any collector's fees that shall be paid into said treasurer shall be credited to and placed in the general fund for the building of said sewer and the expense attending thereon; and when said assessment shall be paid and all outstanding legal obligations incurred under this act and said chapter six hundred and three of the laws of eighteen hundred and ninety-two, shall have been paid, said treasurer shall return, on demand, to each of the persons, their representatives or assigns who shall have paid said assessments in full any surplus he shall have in his hands, in proportion to the amounts each such person shall have paid on said assessment. He shall thereupon file with the county clerk of Monroe county the assessment roll, the books of account and the records pertaining to said sewer, and sixty days after said sewer shall have been completed or the final estimate for the work performed by the contractors shall have been made and approved by said commissioners, their duties and powers shall cease. (*As amended L.* 1895, *Ch.* 438).

See note under § 2, this book, p. 445.

§ 21. **Control of sewer after completion; lateral sewers and drainage.** The sewer provided for by this act, after its com-

pletion shall, as to the portion thereof within the limits of the city of Rochester, be under the charge of the executive board of said city, or its successor, and the portion in the town aforesaid, shall be under the charge of the supervisor and commissioner of highways thereof; and it shall be lawful for such executive board, or said supervisor and commissioner to authorize the introduction into said sewer of lateral sewers and drains, for the purpose of draining any part of said city or town. While the work of constructing said sewer is in progress, the said commissioners may allow lateral sewers or drains to be constructed therewith, upon such terms and subject to such regulations as they shall provide.

§ 22. **Repeal**—Chapter one hundred and fourteen of the laws eighteen hundred and ninety-one, entitled, "An Act to authorize and provide for the construction of a sewer, drain and ditch in the ninth and fifteenth wards of the city of Rochester, and in the towns of Gates and Chili, in the county of Monroe," is hereby repealed.

§ 23. **When in effect** This act shall take effect immediately.

§ 24. **Acts ratified**—All the acts of the commissioners of sewerage appointed under chapter six hundred and three of the laws of eighteen hundred and ninety-two, except as the same are hereby vacated or modified or authorized to be vacated or modified, are hereby ratified and confirmed. (*Added L.* 1895, *Ch.* 438).

§ 25. **Further action limited**—No further action of any kind shall be taken by the commissioners, Horage G. Pierce, Frank S. Upton and George B. Swikehard, or their successors in office under chapter six hundred and three of the laws of eighteen hundred and ninety-two, except to obtain any rights of way required and to issue further certificates or evidence of indebtedness not to exceed sixty-five thousand dollars, according to the provisions of the act hereby amended or of this act, or to make such modifications of the contract for the building of said sewer by supplement or otherwise as may be necessary to comply with this act or any supplemental act, until the assessment roll herein shall be made and filed as hereinbefore required and provided for. (*Added L.* 1895, *Ch.* 438).

AN ACT TO AUTHORIZE AND PROVIDE FOR THE EXTENSION OF THE MAIN SEWER PROVIDED FOR IN CHAPTER SIX HUNDRED AND THREE, OF THE LAWS OF EIGHTEEN HUNDRED AND NINETY-TWO, AND THE CONSTRUCTION OF LATERALS TO CONNECT WITH SAID SEWER IN THE TOWN OF GATES, IN THE COUNTY OF MONROE. (*L.* 1893, *Ch.* 55: *repealed L.* 1895, *Ch.* 744, *printed in full below*).

AN ACT TO REPEAL CHAPTER FIFTY-FIVE OF THE LAWS OF EIGHTEEN HUNDRED AND NINETY-THREE, ENTITLED, "AN ACT TO AUTHORIZE AND PROVIDE FOR THE EXTENSION OF THE MAIN SEWER PROVIDED FOR IN CHAPTER SIX HUNDRED AND THREE OF THE LAWS OF EIGHTEEN HUNDRED AND NINETY-TWO, AND THE CONSTRUCTION OF LATERALS TO CONNECT WITH SAID MAIN SEWER IN THE TOWN OF GATES, IN THE COUNTY OF MONROE," AND TO AUTHORIZE THE COMMISSIONERS OF SEWERAGE, UNDER CHAPTER SIX HUNDRED AND THREE OF THE LAWS OF EIGHTEEN HUNDRED AND NINETY-TWO, TO EXTEND OR CHANGE THE SOUTHERN TERMINUS OF SAID SEWER, AND TO CHANGE ITS ROUTE. (*L.* 1895, *Ch.* 744).

Section 1. **Law repealed**—Chapter fifty-five of the laws of eighteen hundred and ninety-three, entitled "An act to authorize and provide for the extension of the main sewer provided for in chapter six hundred and three of the laws of eighteen hundred and ninety-two, and the construction of laterals to connect with said main sewer in the town of Gates, in the county of Monroe," is hereby repealed.

§ 2. **Change of terminus** The commissioners of sewerage for the tenth, fifteenth and twentieth wards in the city of Rochester, and the town of Gates, are hereby authorized to extend or change the location of the southern terminus of the sewer now being constructed by them in the town of Gates and city of Rochester, to such point on the Chili road, or between said Chili road and the Buffalo road, in said town of Gates, as to them shall seem necessary for the public health, and also to change the dimensions and route of said sewer from its present line to any adjacent line in such parts as to them may seem more economical or beneficial.

§ 3. **When in effect**—This act shall take effect immediately.

NOTE—This law by error was repealed by the Liquor Tax Law of 1896, Ch. 112, but this was corrected by L. 1896, Ch. 650, printed in full, this book, p. 448. **Such inaccuracy in enumeration of laws** does not effect repeal of law thus mentioned—People ex rel. Finch vs. Lord, 9 App Div 458; McKeland Co. vs. Williams, 63 App Div 553, affirmed 173 N Y 630.

AN ACT TO AUTHORIZE THE COMMISSIONERS OF SEWERAGE FOR THE TENTH, FIFTEENTH AND TWENTIETH WARDS IN THE CITY OF ROCHESTER AND THE TOWN OF GATES, TO EXTEND AND CHANGE THE SOUTHERN TERMINUS OF SUCH SEWER AND TO CHANGE ITS ROUTE. *L.* 1896, *Ch.* 650.

Section 1. **Change of terminus** — The commissioners of sewerage for the tenth, fifteenth and twentieth wards, in the city of Rochester, and the town of Gates, are hereby authorized to extend or change the location of the southern terminus of the sewer now being constructed by them in the town of Gates and city of Rochester, to such point on the Chili road, or between said Chili road and the Buffalo road, in said town of Gates, as to them shall seem necessary, for the public health, and also to change the dimensions and route of said sewer from its present line to any adjacent line in such parts as to them may seem more economical or beneficial.

§ 2. **Corrective statute** All proceedings had and acts performed by such commissioners under and by virtue of chapter seven hundred and forty-four of the laws of eighteen hundred and ninety-five, shall have the same validity and effect as if such act had not been repealed by chapter one hundred and twelve of the laws of eighteen hundred and ninety-six.

§ 3. **When in effect** This act shall take effect immediately.

AN ACT TO PROVIDE FOR THE TRANSFER TO THE TREASURER OF THE CITY OF ROCHESTER, OF CERTAIN POWERS OF THE COMMISSIONERS OF SEWERAGE FOR THE TENTH, FIFTEENTH AND TWENTIETH WARDS IN THE CITY OF ROCHESTER, AND THE TOWN OF GATES, MONROE COUNTY. *L.* 1898, *Ch.* 315.

Section 1. **West side sewer commission ended** The commissioners of sewerage for the tenth, fifteenth and twentieth wards, in the city of Rochester, and the town of Gates, Monroe county, having completed the construction of the sewer provided for by chapter six hundred and three of the laws of eighteen hundred and ninety-two, and the acts amendatory thereof and supplementary thereto, are hereby required, within twenty days after the passage of this act, to transfer to the treasurer of the city of Rochester, Monroe county, New York, all the records and proceedings of the said com-

missioners, together with the assessment roll made by them, and all moneys collected thereon, and all other funds in the hands of said commissioners; whereupon the powers and duties of the said commissioners under the said acts shall cease, except as hereinafter provided.

§ 2. **Treasurer shall sell bonds.** Upon such transfer being made, the said treasurer of the city of Rochester, in addition to the powers and duties conferred upon him by chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, is hereby empowered to issue and offer for sale and sell, at not less than par value thereof, assessment bonds to the amount of four hundred thousand dollars, or so much thereof as may be required for the purposes hereinafter specified. Such assessment bonds shall bear interest at the rate of four and one-half per centum per annum, payable semi-annually, and shall mature in from one to six years from the first day of August, eighteen hundred and ninety-eight, in amounts to be determined by the said treasurer of the city of Rochester. With the proceeds of the sale of the said bonds, together with the available moneys in his hands as the successor in office of the said commissioners, the said treasurer of the city of Rochester shall redeem and cancel the certificates of indebtedness or assessment bonds heretofore issued by the said commissioners of sewerage, under the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five. Such redemption shall be made on the first day of August, eighteen hundred and ninety-eight, or at the earliest practicable date thereafter. Said assessment bonds, when issued by the said treasurer of the city of Rochester, under the provisions of this act, shall have the same force and effect as the bonds issued by the said commissioners of sewerage, pursuant to the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five.

§ 3. **Treasurer may act in place of commissioners.** The said treasurer of the city of Rochester is hereby empowered to maintain or defend any action or special proceeding arising from the acts

of said commissioners of sewerage, or arising from his own acts as their successor in office. Said treasurer of the city of Rochester is hereby substituted in place of the commissioners of sewerage, as party to any action or special proceeding now pending, and it is hereby made the duty of the city attorney of the city of Rochester to appear for the said treasurer and prosecute or defend all actions or special proceedings to which said treasurer may be made a party.

The city treasurer succeeded lawfully to the powers and duties of the west side trunk sewer commissioners and has power to collect assessments outside the city of Rochester—Koehler vs. Williams as treasurer, etc., Monroe Equity, opinion filed by Nash, J., January 20, 1904.

§ 4. **Expenses may be paid** The said treasurer of the city of Rochester is hereby authorized, with the approval in writing of the county court of Monroe county, to pay from the funds in his hands any necessary expense not otherwise provided for, which may be incurred in carrying out the provisions of this act.

§ 5. **Deficiency assessments**—In case said treasurer of the city of Rochester shall, at any time, determine that the amount levied by the assessment heretofore made by the commissioners of sewerage, pursuant to the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, is insufficient to pay off, at the maturity thereof, the assessment bonds herein provided for, and shall file a certificate with the clerk of Monroe county that such deficiency is in excess of the sum of thirty thousand dollars, then, and in that case, the county court of Monroe county shall make an order directing the said commissioners of sewerage, who were appointed under the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two and chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, or their successors in office under the provisions of said acts, to make such further assessment as shall be necessary, and the proceedings in reference thereto shall be, in all respects, as far as practicable, the same as provided for in chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, except that such assessment may be made payable in one

or more installments as the said commissioners of sewerage may determine. In case such deficiency does not exceed the sum of thirty thousand dollars, then, and in that case, the said county court shall make an order determining the amount of such deficiency, and directing the said treasurer of the city of Rochester to apportion the same to each of the persons, his or their representatives or assigns, who were assessed under the provisions of said chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, in proportion to the amount which each such person or persons were assessed in the assessment roll heretofore made by said commissioners under the provisions of said acts. Such apportionment shall be in the usual form of an assessment roll, payable in one installment, at such time as the said treasurer of the city of Rochester shall determine. Upon filing the said assessment roll, or a copy thereof, with the clerk of Monroe county, and upon the publication of a notice of such filing for ten days in at least three of the daily newspapers of the city of Rochester, one of which shall be a German newspaper, the said assessment shall be a lien upon the several tracts or parcels of land included therein until the same shall be paid. And the proceedings for the collection and enforcement thereof shall be in all respects, as near as practicable, the same as provided for in the assessment heretofore made by the said commissioners of sewerage under the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five.

§ 6. **West side sewer commission ended.** The said commissioners of sewerage are hereby required to transfer to the said treasurer of the city of Rochester all interest, liens or titles to any lands acquired by them on any sale for unpaid assessments, and the said treasurer of the city of Rochester is hereby empowered to dispose of the same, or of any interest, liens or titles to any lands that may be acquired by him as the successor in office of the said commissioners of sewerage, by private sale or otherwise, the proceeds thereof, after deducting the expense of the proceedings, to be used for the redemption of the outstanding bonds issued by the said commissioners of sewerage under the provisions of chapter six hundred

and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, or issued by the said treasurer of the city of Rochester under the provisions of this act.

§ 7. **Treasurer shall report**—The said treasurer of the city of Rochester shall, annually, on or before the fifteenth day of January in each year, file with the Monroe county court a full and complete statement of all his financial transactions and the disposition of all moneys received by him under and by virtue of the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, or of this act, which reports shall be verified by the oath of the said treasurer of the city of Rochester, and shall be duly examined and audited by the said county court.

§ 8. **Law repealed**—So much of the provisions of chapter six hundred and three of the laws of eighteen hundred and ninety-two, as amended by chapter four hundred and thirty-eight of the laws of eighteen hundred and ninety-five, as are inconsistent with the provisions of this act are hereby repealed.

§ 9. **When in effect**—This act shall take effect immediately.

TAXES AND ASSESSMENTS

AN ACT TO AUTHORIZE THE CITY OF ROCHESTER TO ISSUE ITS BONDS TO AN AMOUNT NOT EXCEEDING FOUR HUNDRED THOUSAND DOLLARS FOR THE PURPOSE OF PAYING NOTES AND ACCEPTANCES ISSUED AND ADVANCES MADE BY SAID CITY UPON AND BY VIRTUE OF LOCAL ASSESSMENTS. (*L.* 1885, *Ch.* 168).

SECTION 1. **Authority of common council**—The city of Rochester is hereby authorized and empowered to issue its bonds, in such denomination and amount, not to exceed the sum of four hundred thousand dollars, as the common council shall direct, for the purpose of obtaining money with which to pay notes and acceptances issued by

said city upon local assessments and advances made by said city upon local assessments; such bonds to bear interest at a rate not exceeding four per cent. per annum, and to be payable at such time as the common council shall direct; but the said bonds shall not to be negotiated or disposed of at any rate less than the par value thereof.

§ 2. **When in effect** This act shall take effect immediately.

An Act to exempt Warner's observatory from assessment or taxation. (*L.* 1886, *Ch.* 391; *repealed L.* 1894, *Ch.* 529).

An Act authorizing the city of Rochester to issue bonds against past due taxes. (*L.* 1896, *Ch.* 698).

Section 1. **Past-due tax bonds**—The common council of the city of Rochester is hereby authorized to issue the bonds of said city, to be known as the past-due tax bonds, to such an amount as shall be necessary, not exceeding five hundred thousand dollars, the proceeds of which shall be used in paying the promissory notes or other obligations of said city, heretofore issued on taxes levied but uncollected; and such an additional amount each year hereafter as shall be necessary, not exceeding, however, the amount of unpaid taxes advertised for sale in such year by the city treasurer, the proceeds of which shall be used for the same purposes for which the unpaid taxes so advertised were levied, said bonds to be countersigned by the mayor and president of the common council, to be payable at such time and to be sold in such manner as the common council shall determine, at a rate of interest, however, not to exceed four per centum per annum and at not less than the par value of said bonds; the proceeds of said bonds to be deposited in such banks or trust companies and upon such terms as the common council may determine.

§ 2. **When in effect** This act shall take effect immediately.

An Act to legalize, validate and confirm sales of taxes made by the city of Rochester. (*L.* 1898, *Ch.* 586).

Section 1. **Tax sales validated**—All sales of land made by the city treasurer of the city of Rochester for unpaid taxes are hereby

legalized, validated and confirmed so as to be of the same force and effect as though notices of such sales had been duly advertised, and such sales made as required by law.

§ 2. **Actions pending**—Nothing herein contained shall affect any action or special proceeding now pending in any court relative to such taxes or the sales made for the collection thereof.

§ 3. **When in effect** This act shall take effect immediately.

Held constitutional—Roe vs. City of Rochester, opinion by Dunwell, J., filed in Monroe county clerk's office January 21, 1901.

See memorandum of decisions relating to taxation, this book, pp. 188-190.

AN ACT TO AUTHORIZE THE CITY OF ROCHESTER TO COMPROMISE THE AMOUNT LEVIED AND ASSESSED AGAINST THE COUNTY OF MONROE FOR THE COST AND EXPENSE OF IMPROVING CHURCH STREET IN THE CITY OF ROCHESTER. (*L.* 1903, *Ch.* 110).

Section 1. **Church street assessment**—The common council of the city of Rochester is hereby authorized to compromise the amount levied and assessed against the county of Monroe for the cost and expense of improving Church street, and to remit a part thereof, and the whole or any part of the interest and penalties that have accrued thereon. The amount so remitted shall be charged against the city of Rochester and raised in the next annual levy of taxes, and when collected shall be credited to the local improvement fund.

§ 2. **When in effect** This act shall take effect immediately.

Act to provide for payment of certain local assessments against state lands in Rochester—L. 1897, Ch. 577.

Mt. Hope Cemetery property exempt from taxes and assessments—Old Charter, L. 1880, Ch. 14, § 219, this book, page 342.

AN ACT RELATING TO TAXES IN THE CITY OF ROCHESTER. (*L.* 1903, *Ch.* 522).

Section 1. **Taxes validated** All taxes heretofore spread upon the assessment rolls of the various wards in the city of Rochester are hereby validated, and rendered legal and binding upon the persons taxed and property assessed, notwithstanding any irregularity, omis-

sion or error in any of the proceedings relating to the same, or in the making, levying and assessment of the same, and all proceedings for the collection of such taxes are hereby declared valid and effectual, notwithstanding any irregularity, omission or error in any of such proceedings, and notwithstanding the omission from any tax warrant of the seal of the city of Rochester.

§ 2. **Back taxes may be paid** All taxes heretofore spread upon the assessment rolls of any of the wards in the city of Rochester, and unpaid and held by and owing to the city of Rochester on the date of the passage of this act, excepting taxes for the years nineteen hundred and two and nineteen hundred and three, may be paid with interest thereon. Personal taxes at the rate of six per centum per annum from the date when said tax *is spread was confirmed by the common council, and taxes assessed upon real estate at the rate of six per centum per annum from the date when said real estate was sold by the city treasurer, provided such payment be made within ninety days after the passage of this act; and provided also in case any of said taxes are in litigation, or in process of collection by action, foreclosure or supplementary proceedings, that the taxable costs thereof incurred prior to April two, nineteen hundred and three, be also paid.

§ 3. **How taxes may be collected** All taxes heretofore spread upon the assessment rolls of the various wards in the city of Rochester, may be collected by the corporation counsel, either by action, or by supplementary proceedings, or by foreclosure of tax liens, without regard to the date when the said taxes were so spread, and the statute of limitations cannot be interposed as a defense thereto. The remedies herein provided shall be in addition to the other methods provided in the charter of the city of Rochester for the collection of taxes in the said city of Rochester, and not dependent upon them, or any of them. No certificate of the mayor of the said city of Rochester, made by said mayor under section one hundred and four of the charter of said city, of failure to redeem land sold for taxes, now or hereafter recorded in the office of the county clerk of Monroe county, shall be discharged until all city taxes which are a lien upon the premises described in said certificate, shall have been

*So in the session laws. Should read "as."

paid. Notice to redeem from sale for taxes, may be served at any time after the expiration of two years from the date of said sale. Upon the foreclosure of tax liens in actions brought in the supreme and county courts, all taxes due the city of Rochester may be included in the action of foreclosure and be satisfied from the proceeds of the sale of the premises. Where several lots or parcels of land are owned by the same person or persons, distinct tax liens upon the separate lots and parcels of land so owned may, at the option of the city of Rochester, be foreclosed in one action, and actions now pending may be consolidated, in the discretion of the court, upon such facts being shown.

§ 4. **Hearing before board of estimate; reduction or cancellation of taxes.** Within ten days after the passage of this act, the board of estimate and apportionment of the city of Rochester shall cause to be published, in the official newspapers of said city, for ten days, a notice requiring the owner or owners of, and all persons or corporations interested in, lands upon which there remain unpaid taxes, and all persons or corporations owing taxes heretofore levied, either real or personal, to present their objections thereto, in writing, to said board of estimate and apportionment, within sixty days after the passage of this act. Any person or corporation so desiring shall demand in such written objections that he be heard in relation to said tax by said board of estimate and apportionment, and shall state in said written objections the address at which such notice of hearing may be sent to him, and upon such demand being made, and such address being given, the board of estimate and apportionment shall fix a time for hearing such person or corporation, and mail to him, at said address, a notice of the time and place of such hearing; and the said board of estimate and apportionment shall have power to reduce any tax so objected to in writing, or to cancel or remit the same, or any part thereof, subject to the approval of the common council. The amount of the reduction and cancellation of taxes shall be raised in such manner as may be directed by the common council. In case any tax has been assessed against any person or corporation in a ward other than the ward in which such person resided, or such corporation had its principal office, the clerk of said board of estimate and apportionment may serve, or cause to be served, written notice of such tax upon such person or corporation, stating the time and place at which

such person or corporation will be given a hearing thereon by and before said board of estimate and apportionment, which hearing may be adjourned from time to time. The board of estimate may give a hearing upon similar notice in regard to all other taxes, in such cases as they may deem advisable. After such hearing, or in case the person or corporation so notified does not appear, the board of estimate and apportionment shall determine the amount which should be taxed against, and collected from, such person or corporation, subject to confirmation by the common council; such sums so determined upon shall bear interest at the rate of twelve per centum per annum, from the date of the confirmation of the assessment roll in which the tax against such person or corporation originally appeared. The board of estimate and apportionment may, however, fix a different date from which to compute interest, and a different rate of interest, subject to the approval of the common council. The board of estimate and apportionment shall certify to the city treasurer the name of the person against whom such tax is assessed, the amount thereof, the rate of interest thereon, and the date from which the same bears interest, and the city treasurer shall thereupon proceed to collect the same in the same manner as other city taxes are collected, and the sums so determined upon by the board of estimate and apportionment shall be, and are hereby declared to be, a tax against such person or corporation. Every determination by said board of estimate and apportionment pursuant to this act, shall be final and conclusive when confirmed by a majority vote of the common council. The provisions of section four of this act shall not apply to taxes levied and assessed in the city of Rochester during the years nineteen hundred and two and nineteen hundred and three.

§ 5. **Does not apply to local improvements.** The provisions of this act shall not apply to assessments levied for the cost and expense of local improvements.

§ 6. **When in effect.** This act shall take effect immediately.

Acts levying assessments for the cost of constructing certain local improvements:

Paving S. St. Paul street from Court street to Erie canal—L. 1[illegible], Ch. 401.

Paving S. St. Paul street from East Main street to County street—L. 1899, Ch. 401.

Paving Mt. Hope avenue from Prospect to Elmwood ave——L. 1899, Ch. 403.

Paving Court street from S. St. Paul street to Clinton street—L. 1899, Ch. 404.
Paving Parsells avenue from Leighton street to Culver road—L. 1899, Ch. 407.
Paving East Main street from Goodman street to Culver road—L. 1899, Ch. 408.
Paving Lyell avenue—L. 1899, Ch. 409.
Paving West Main street from Fitzhugh street to Erie canal—L. 1899, Ch. 410.
Paving Exchange street from Erie canal to Clarissa street—L. 1899, Ch. 411.
Paving Exchange street from Main street to Erie canal—L. 1899, Ch. 412.
Paving Lake View Park—L. 1899, Ch. 636.
Act validating ordinance for improvement of Portland avenue—L. 1901, Ch. 447.

ACTS LEVYING ASSESSMENTS UPON STREET RAILWAY IN CITY OF ROCHESTER FOR COST OF PAVEMENT BETWEEN TRACKS:

Hudson avenue from Clifford street to Norton street—L. 1901, Ch. 262.
Clinton avenue North from Andrews street to N. Y. C. & H. R. R. R.—L. 1901, Ch. 263.
Main street East from University avenue to Circle street—L. 1901, Ch. 264.
North street from Weld street to Nash street—L. 1901, Ch. 265.
Clinton avenue North from Main street East to Andrews street—L. 1901, Ch. 266.
Elm street from Main street East to Chestnut street—L. 1901, Ch. 267.
Clinton avenue North from N. Y. C. & H. R. R. to Clifford street—L. 1901, Ch. 268.
Monroe avenue from Dartmouth street, one hundred and fifty feet east of Erie canal—L. 1901, Ch. 269.
Joseph avenue from Clifford street to Avenue D—L. 1901, Ch. 270.
Clinton avenue North from Clifford street to Norton street—L. 1901, Ch. 271.
Central avenue from Clinton street North to North street—L. 1901, Ch. 272.
Monroe avenue from Clinton avenue South to South Goodman street—L. 1901, Ch. 273.
Clarissa street from Exchange street to Genesee River Bridge—L. 1901, Ch. 274.
Emerson street from west end of Deep Hollow to Dewey avenue—L. 1901, Ch. 275.
Dewey avenue from Emerson street to Driving Park avenue—L. 1901, Ch. 276.
Central avenue from Clinton avenue North to Genesee river—L. 1901, Ch. 277.
Caledonia avenue from Erie canal to Plymouth avenue—L. 1901, Ch. 278.
Emerson street from Backus street to Deep Hollow—L. 1901, Ch. 279.
Ames street from Jay street to Maple street—L. 1901, Ch. 280.
Jefferson avenue from Plymouth avenue to Cady street—L. 1901, Ch. 281.
Jay street from Child street to Ames street—L. 1901, Ch. 282.
City authorized to make contract of settlement with Rochester Ry. Co.—L. 1901, Ch. 562.

An Act in relation to the collection of taxes in Monroe county, and to authorize and provide for the sale of property for unpaid taxes in said county. (*L.* 1884, *Ch.* 107).

Section 1. **County taxes** It shall be the duty of the county treasurer of Monroe county to collect annually all unpaid taxes upon lands in said county levied for state or county purposes in the manner hereinafter provided.

§ 2. **When treasurer shall pay state tax** It shall not be the duty of the county treasurer of the county of Monroe to transmit to the comptroller any account of unpaid taxes assessed upon corporations or upon lands of non-residents, or of unknown owners in said county, or any collectors' affidavit in relation thereto; nor shall the comptroller credit the said treasurer of said county with any unpaid taxes on lands or upon corporations, whether assessed to residents or as non-resident land; but the whole amount of any state tax unpaid on property in said county of Monroe shall be paid by the said treasurer of the county of Monroe to the treasurer of the state of New York, on or before the first day of April, after the same shall have been assessed upon the real and personal estate of said county except so much thereof as shall be equal to the state school tax assessed upon said county, as annually certified by the state comptroller, which amount shall be retained and paid out by the said treasurer of the county of Monroe, as provided by chapter three hundred and fifty-one of the laws of eighteen hundred and eighty, and also the amount allowed for receiving and paying the money belonging to the state, as provided in chapter two hundred and thirteen, laws of eighteen hundred and seventy nine; and in case the whole amount of such moneys due the state shall not be collected by the said first day of April, the treasurer of the said county of Monroe shall make provision for the payment of the same by temporary loans upon the credit of the said county, or by advancing the said amount out of any funds in the treasury not otherwise appropriated.

§ 3. **Correcting description of lands** The county treasurer of said county shall examine the accounts of arrears of taxes received from the collectors of the towns, and all taxes so erroneously assessed

in form or substance that the collection of the same cannot be enforced, or in case the property on which said taxes are levied is so imperfectly described that the same cannot, in the opinion of the treasurer of said county, be located with certainty, he shall, on or before the fifteenth day of June following, deliver a transcript thereof to the supervisor of the town in which such property is located, who shall, within thirty days thereafter, cause a correct description of the lands so imperfectly described to be made and returned to the said treasurer. If such improperly described property is located in the city of Rochester the assessors of said city of Rochester shall cause a correct description of such lands to be made and delivered to the said treasurer on or before the fifteenth day of July following.

§ 4. **Publication of notice as to tax sales**— The treasurer of said county shall make a list or statement of the lands charged with such unpaid taxes, and for thirty days prior to the first Tuesday in August, in each and every year, shall cause to be published and printed in the newspapers in said county designated by the board of supervisors for publishing the session laws, a notice containing five squares, which notice shall call the attention of the public and all persons interested, that on the first Tuesday in August of that year, specifying the date, he will publish a list or statement of the lands charged with such unpaid taxes, and that such list or statement will be published and printed in the newspapers in said county designated by the board of supervisors for publishing the session laws, specifying such newspapers, and such list or statement of lands charged with such unpaid taxes shall be published in such papers on the first Tuesday in August prior to the time of such sale, which shall commence on the third Tuesday of August in each and every year, together with a notice that so much of said lands as may be necessary to discharge the taxes, interest and charges which may be due thereon at the time of the sale, together with the expense of procuring description, will, on the day aforesaid, which shall be specified in such notice, and the succeeding days, be sold at public auction in the treasurer's office in the city of Rochester. Should any errors be discovered in the description of the lands so assessed and taxed, the said treasurer may correct the same at any time previous to the sale, and no errors in the

printed description in such newspapers shall vitiate or in any manner affect the validity of such sale. All expense of printing such list or statement and notices shall be audited by the board of supervisors and paid out of the treasury of said county. The publishers of said newspapers shall, immediately after the last publication of said list and notice, deliver to the treasurer of said county an affidavit of the due publication thereof, made by some person or persons to whom the fact of such publication shall be known. (*As amended L. 1893, Ch. 718.*)

§ 5. **Tax sales**—On the day specified in the notice of sale the treasurer shall commence the sale of such lands, and shall continue the same from day to day, until so much of each parcel so assessed shall be sold as will be sufficient to pay the taxes, interest and charges thereon.

§ 6. **Tax certificates after sale**—The purchasers at such sale shall pay the amounts of their respective bids to the said treasurer immediately after the sale, and after such payments shall have been made the said treasurer shall add a penalty of ten per centum thereto for the benefit of the said purchasers, and shall give the purchaser of any such real estate a certificate describing the lands purchased, the sum paid and the penalty attached thereto, and stating the time when the purchaser will be entitled to a deed. Said treasurer shall be paid by said purchaser the sum of twenty-five cents for his fees on the delivery of such certificate of sale, which amount shall be added to such tax when paid.

§ 7. **Cancellation of sales and new certificates**—When any purchaser at such sale shall neglect to pay the amount of his bid for fifteen days after the conclusion of any sale of lands for taxes, pursuant to this act, it shall be lawful for the said treasurer to cancel such sale, by which all the rights of the said purchaser under such bid shall be extinguished, and issue a certificate of such sale to any other person who will pay the amount for such certificate which would be payable by the original purchaser, in case the said sale had not been canceled; or if such certificate cannot be sold he may transfer the same to the county of Monroe, and the certificates issued

to such new purchaser, or to the county of Monroe, shall transfer the same rights that would have been obtained by the successful bidder at the sale had he have completed his purchase.

§ 8. **Redemption** At any time within two years after the last day of any sale of land for taxes as aforesaid, any person may redeem the same by paying to the county treasurer, for the use of the purchaser, his heirs or assigns, the sums mentioned in his certificate, with interest thereon at the rate of ten per cent. per annum from the date of such sale.

§ 9. **Tax deeds**—If such real estate sold for taxes, or any portion thereof, be not redeemed as hereinbefore provided, the treasurer of said county shall execute to the purchaser, his heirs or assigns, in the name of the people of this state, a conveyance of the real estate so sold, which, when perfected in the manner hereinafter provided, shall vest in the grantee an absolute estate in fee subject, however, to all the claims which the people of this state may have thereon for taxes or other liens or incumbrances; and the said treasurer issuing such conveyance, shall be entitled to demand and receive from the grantee one dollar as his compensation for preparing such conveyance.

§ 10. **Execution of deeds with presumption thereof** Every such conveyance shall be executed by the treasurer of said county, under his hand and seal, and the execution thereof shall be acknowledged before a proper officer the same as other conveyances of real estate are acknowledged and executed under the laws of this state; and such conveyance shall be conclusive evidence that the sale was regular, and also presumptive evidence that all the previous proceedings from and including the assessment of the land, and all notices required by law to be given previous to the expiration of the two years allowed to redeem, were regular.

§ 11. **Treasurer shall bid in lands**—It shall be the duty of the treasurer to bid in for the county of Monroe, at any sale of land for taxes, by virtue of this act, every lot of land by him put up for which no person shall offer to bid, and certificates of such sale shall be made by the treasurer, which shall describe the lands purchased and specify the time when the board of supervisors of the county of

Monroe will be entitled to a deed. Such purchases shall be subject to the same right of redemption as purchases by individuals, and if the lands sold shall not be redeemed, the treasurer shall execute a conveyance therefor to the board of supervisors of the county of Monroe, or its assigns, which shall have the same effect, and become absolute in the same time and on the performance of the like conditions as in the case of sales and conveyances to individuals.

§ 12. **Treasurer may sell certificates**—The treasurer may, at any time, sell and assign all the interests of the county of Monroe in any or all certificates owned by the said county of Monroe, either at public or private sale, as to him may seem best for the interest of said county, to any person who shall forthwith pay into the county treasury the amount of the purchase money charged him by the treasurer, and the assignee of such certificates, if the lands therein described be not redeemed, shall be entitled to a deed therefor, which shall have the same effect and become absolute in the same time, and on the performance of the like conditions as in the conveyances in the last preceding section.

§ 13. **Notice to occupant**—Whenever the whole or any part of any lot or separate tract of land sold for taxes by the treasurer, and conveyed as hereinbefore provided, shall, at the time of the expiration of the two years given for the redemption thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him, shall cause a written or printed notice to be served upon the person or persons occupying such land, within two years from the expiration of said time to redeem, stating in substance, the sale and conveyance, the person to whom made, and the amount of the consideration money mentioned in the conveyance, with the addition of thirty five per centum on such amount, and the sum paid for the deed not exceeding five dollars, and stating also that unless such consideration money and the said thirty five per centum together with the sum paid for the deed shall be paid into the treasury for the benefit of such grantee, within three months after the time of filing in the treasurer's office of the evidence of the service of the said notice, that the said conveyance will become absolute, and the occupant and all others interested in the land be forever barred from all right or title thereto; such notice shall be

served personally on such occupant, or by leaving it at his dwelling-house or place of business with some person of suitable age and discretion.

§ 14. **Notice to person to whom land is assessed** At the expiration of the two years given for the redemption of any lot or separate tract of land sold for taxes, and conveyed as hereinbefore provided, the grantee, or the person or persons claiming under him, shall, in all cases, whether said land is occupied or unoccupied, cause to be served upon the person or persons to whom the same is assessed on the county assessment rolls at the time of such service, a notice similar in all respects to that required in the last preceding section, to be served upon the occupant. Said notice may be served either personally or by depositing the same in the Rochester post-office properly sealed and inclosed in a post-paid wrapper, directed to the said person to whom said land is assessed, at his last known place of residence.

§ 15. **Redemption**—Any person having an interest in or lien upon premises sold for taxes, pursuant to the provisions of this act, and remaining unredeemed after service of either of the notices required by the last two preceding sections, may, at any time within the three months mentioned in such notice, redeem said land by paying into the county treasury such consideration money, with the addition of thirty-five per cent. thereon, and the amount that shall have been paid for the deed; and every such redemption shall be as effectual as if made before the expiration of the two years allowed to redeem the land sold.

§ 16. **Order to show cause**—Within one year after the expiration of the three months mentioned in the notice to be served pursuant to sections thirteen and fourteen of this act, the grantee, his heirs or assigns, shall make application to the county court of Monroe county for an order requiring the parties interested to show cause why he should not have possession of and title to such property; and if such property be incumbered by mortgage which is recorded, or by a judgment which is a lien thereon, or by any other recorded lien, the court shall cause a written or printed copy of said order to show cause to be served on the person who according to the records in Monroe

county clerk's office is the owner of such property and of such mortgage, judgment or other recorded lien, stating in substance the sale and conveyance, the person to whom conveyed, the amount of the consideration money mentioned in the conveyance, together with thirty-five per centum on said amount, and the amount paid for the deed, and for serving all orders required by this section, and that unless such consideration money, together with the thirty-five per centum and the expense of procuring the deed, and the expense of serving said orders to show cause, is paid into the treasury of said county by a person having an interest in or lien upon said lands together with the costs allowed by the court for this proceeding, which amount shall be specified in said order, within three months from the service thereof, the court will declare the title vested in the grantee. Said order to show cause shall in every case be served upon the person who according to the records of the Monroe county clerk's office, is the owner of said property.

§ 17. **Final order**—At any time after the expiration of the three months last aforesaid, unless the premises are redeemed according to the terms and conditions of said order, the county judge or special county judge may by a final order declare the absolute title in fee to the said premises vested in the grantee, and that all persons having any lien upon or interest in said premises shall be, from the date thereof, forever barred and cut off from any and all right, title or interest in said property.

§ 18. **Redemption after final order**—Any person having an interest in or lien upon said premises, may, within the three months mentioned in the last preceding section, redeem the same by paying into the county treasury the amount stated in the order to show cause, and such redemption shall be as effectual as if made at any time prior to the granting of the said order to show cause.

§ 19. **Service of order to show cause**—The order to show cause required by section sixteen of this act shall be served by the sheriff or his deputy personally upon the person who by the records in the Monroe county clerk's office appears to be the owner of the property, the owner or owners of the mortgage, judgment or other recorded lien, if any there be, if said owner or owners reside in Monroe county; if not residents of said county, service shall be made in

the manner provided for the service of notices in section fourteen of this act. The certificate of the sheriff stating the time, place, and manner of such service shall be presented to the county judge or special county judge before the granting of the final order provided for in section seventeen of this act.

§ 20. **Recording conveyances**—No conveyance made in pursuance of this act shall be recorded until all notices and orders required by the provisions of this act have been served, and all proceedings required to be taken have been so taken; and the final order required by section seventeen of this act, and the certificate of the county judge, or special county judge stating that all proceedings have been regular, and that all necessary notices have been served, shall be attached to and recorded with such conveyance.

§ 21. **Filing notice**—Within one month after the service of a notice required to be served by sections thirteen and fourteen of this act, a copy of such notice shall in all cases be filed with the county treasurer, together with the affidavit of the persons making such service, which shall specify the time, place and manner of such service.

§ 22. **Fees for serving notices** For serving an order required by the provisions of this act to be served by the sheriff, he shall be entitled to charge and receive of the purchaser or grantee for each such service, if personal, the same compensation to which he is now entitled by law for serving a summons in a civil action; and if served by mail he shall be entitled to a sum not to exceed fifty cents for each such service.

§ 23. **Cancellation of tax sale** Whenever the county treasurer shall discover, prior to the conveyance of any lands sold for taxes by virtue of this act, that the sale was for any cause whatever invalid or ineffectual to give title to the lands sold, the lands so improperly sold shall not be conveyed, but the treasurer shall cancel the sale, and forthwith cause the purchase-money and interest thereon to be refunded out of the county treasury to the purchaser, his representatives or assigns.

§ 24. **Charges to be added to tax**—The charges to be added to the tax and interest upon each parcel of land to be sold or adver-

tised for sale by virtue of the provisions of this act shall be fixed by the board of supervisors of Monroe county, at their first session after the passage of this act. Before being so determined by said board of supervisors, said charges shall be as follows: For each parcel sold, the sum of one dollar and fifty cents, of which seventy-five cents shall be received by the county treasurer as his compensation, and the balance shall be paid into the county treasury; and for each parcel redeemed before the same is sold, the sum of one dollar, of which fifty cents shall be received by said treasurer, and the balance paid into said treasury.

§ 25. **Laws repealed**—All acts and parts of acts inconsistent with this act are hereby repealed, so far as they relate to Monroe county. Nothing in this act however shall affect any sale of any property or impair any vested right acquired or created under or pursuant to any existing law.

§ 26. **When in effect**—This act shall take effect immediately, excepting that provision of section six which authorizes the treasurer to receive a fee for certificates of sale, which provision shall take effect on the expiration of the term of office of the present incumbent.

WATER WORKS

An Act to supply the city of Rochester with pure and wholesome water. (L. 1872, Ch. 387.)

Section 1. **Appointment of water commissioners; tenure of office**—The mayor of the city of Rochester shall appoint five persons who shall thereafter be known as the board of water commissioners of the city of Rochester, for constructing water works for said city, who shall hold office for one, two, three, four and five years respectively, as determined by said mayor at the time of appointment. On the completion of said water works, said board shall cease to exist, and thereupon all property, books and papers relating thereto, shall be placed in the control of the common council of said city; any vacancy in said board shall be filled by the mayor of said city for the unexpired term; and said mayor shall appoint the successor of the

commissioner about to go out of office within twenty days before the expiration of the term of office of said commissioner. Said commissioners shall be residents of said city. Provided, however, the terms of office of the said water commissioners shall not extend beyond the first day of October, eighteen hundred and seventy-six. (*L.* 1872, *Ch.* 387: *as amended L.* 1873, *Ch.* 754).

§ 2. **Duties of commissioners** — It shall be the duty of the said commissioners to examine and consider all matters relative to supplying the city of Rochester with a sufficient quantity of pure and wholesome water for the use of its inhabitants and for the extinguishment of fires. (*L.* 1872, *Ch.* 387).

§ 3. **Engineers, surveyors, etc.; reports** — Said commissioners are authorized to employ engineers, surveyors and such other persons as in their opinions may be necessary, to ascertain the best and most expedient plan for procuring such supply of water, and make surveys, maps and plans, together with estimates of the cost of the same (but said commissioners shall take no action without the approval of the mayor, looking to the leasing or purchasing the water works now in process of construction), and shall submit a report of the plan adopted by them, and the estimated cost thereof, to the mayor of said city, together with such information connected with the object of their appointment as they may deem necessary. (*L.* 1872, *Ch.* 387).

§ 4. **Borrowing money; bonds** — If the plan adopted by said commissioners shall be approved by the mayor of said city, then said commissioners shall proceed with their plans for providing said city with water, and shall have power to borrow from time to time, upon the credit of said city of Rochester, an amount not exceeding the amount named in their estimates of the cost of said works, upon such terms of credit, not exceeding thirty years, and at a rate of interest not exceeding seven per cent. per annum: and to secure said loan, the said commissioners are authorized to make, execute and sell, at not less than par, from time to time, as may be necessary, bonds, which shall be signed by the mayor and the president of the board of water commissioners, as such commissioners, which said bonds, and the interest thereon, shall be a valid lien against said city of Rochester, and the credit of said city is pledged for the payment of the same.

The proceeds of said bonds, shall be applied by said commissioners to the payment of expenses incurred by them under the provisions of this act. (*L.* 1872, *Ch.* 387; *as amended* 1873, *Ch.* 754).

Amount of bonds limited — The board of water commissioners of the city of Rochester is hereby authorized to issue bonds for the construction of water works for said city, to an amount not exceeding three millions of dollars, the provisions of section four, of act chapter three hundred and eighty-seven, laws of eighteen hundred and seventy-two, to the contrary thereof notwithstanding. (*L.* 1874, *Ch.* 649, § 3).

§ 5. **Common council to pay expenses** The common council of said city shall pay, from time to time, as said commissioners may require, all expenses incurred by said commissioners under the provisions of this act, up to the time of submitting their estimate to the mayor of said city. (*L.* 1872, *Ch.* 387).

§ 6. **Bonds**—The common council of said city is hereby authorized to issue the bonds of said city at a rate of interest not exceeding seven per cent. per annum, payable in not more than thirty years, in such form and executed in such manner as said common council shall direct, to an amount equal to the interest which has accrued and shall accrue upon the bonds authorized to be issued by this act prior to and until the time of the completion of the system of water works hereby authorized, provided, however, that no bonds shall be issued for the payment of any interest which shall accrue on such bonds subsequent to the year eighteen hundred and seventy-six. Such bonds may be sold at not less than par, and the proceeds shall be used solely to pay the interest accruing on such bonds as above specified. The common council is hereby authorized and directed to raise, from time to time, by tax, upon the estates, real and personal, subject to tax in said city, the sum or sums which may be required to pay the interest on the bonds hereby authorized to be issued, except as herein otherwise provided, and to redeem them at maturity. The common council of said city is hereby authorized, if, in its opinion, it shall be deemed necessary for the completion of the water works for said city, to direct the issue of the bonds of said city in the manner heretofore prescribed by law at a rate of interest not exceeding seven per cent per annum, payable in not more than thirty years from date

thereof, but the amount of such bonds shall not exceed in the aggregate the sum of one hundred and eighty-two thousand dollars, and such bonds shall not be sold at less than par. The common council of said city is hereby authorized and directed to raise, from time to time, by tax upon the estates, real and personal, subject to tax in said city, the sum or sums which may be required to pay the interest on the bonds hereby authorized to be issued and to redeem them at maturity. (*L.* 1872, *Ch.* 387; *as amended* 1875, *Ch.* 593).

NOTE—See act authorizing refunding water works loan bonds, L. 1902, Ch. 550, this book, p. 486.

§ 7. **When in effect**—This act shall take effect immediately.

Commissioners may enter highways, etc.—The said water commissioners are hereby authorized to enter upon any public street, highway, road, public square, bridge or railroad in any of the villages or towns adjoining or in the vicinity of the said city, through, under or across which it may be found necessary or proper to conduct the water from any river, lake, spring, pond or stream of water, for the purpose of conveying it to said city, and to lay, construct, alter, replace or repair any pipes, conduits, aqueducts or other works necessary for that purpose, leaving said street, highway, road, public square, bridge or railroad in the same condition, as nearly as may be, as they were before the said entry; provided, however, that before interfering with any street, structure or other right of any incorporated village or railroad company, it shall be necessary to obtain the consent of the trustees of such village or directors of such railroad company, or in case such consent cannot be obtained, then to proceed to acquire the necessary rights in the same manner as the title to rights in other lands are acquired. (*L.* 1872, *Ch.* 771, § 24; *as amended* 1873, *Ch.* 754).

Salary of water commissioners—The said water commissioners shall severally receive the sum of five dollars per diem besides their reasonable expenses, for the time employed by them respectively as such commissioners, not exceeding, however, to each commissioner the sum of one thousand dollars in any one year. (*L.* 1872, *Ch.* 771, § 25).

Amount of bonds limited The amount of the bonds of said city of Rochester, to be issued under the provisions of this act, shall not exceed the sum of three millions of dollars. (*L.* 1872, *Ch.* 771, § 26).

Misdemeanor, punishment It shall be a misdemeanor punishable by fine or imprisonment for either of said commissioners or any clerk, engineer or superintendent appointed by them to be in any manner or way interested, directly or indirectly, in furnishing any materials, supplies or labor, for the erection of said water works or in any contract which said commissioners are empowered to make by this act, and every purchase or contract in which any such person is interested shall be deemed forfeited as to any interest of any such person. (*L.* 1872, *Ch.* 771, § 27).

Powers of water commissioners The board of water commissioners of the city of Rochester, appointed under the provisions of act chapter three hundred and eighty-seven of the laws of eighteen hundred and seventy-two, are hereby authorized to enter upon, control and use, as the agents of the city of Rochester, the waters of Hemlock lake and Canadice lakes,* situated in the county of Livingston, for the purpose of procuring a water supply for the said city of Rochester, and shall also have the power to raise the surface of water in said lakes not to exceed two feet, and to draw down the said water below low water mark not to exceed eight feet; also the right to take such measures and make such constructions as shall be necessary to secure said waters for the purpose intended, and to protect the same from improper obstructions or pollution from any cause; also, to perform any and all acts relating thereto, which may be necessary for the purposes for which said commissioners are appointed, all of the above powers hereby granted to be exercised with due regard to the rights of owners of property adjacent thereto or dependent thereon. And the city of Rochester shall be liable to pay to such owners any and all damages which may be caused to said property by the performance of said act or the exercise of the powers hereby granted. (*L.* 1873, *Ch.* 754, § 3).

Note. The executive board of the city of Rochester succeeded to all the powers of the board of water commissioners as set forth in the above section (L. 1876, Ch. 37, § 2, amending § 155, Old Charter).

*So in the session laws.

Bonds—All bonds of the city of Rochester made to provide means for the construction of water works for the said city of Rochester, on demand and under direction of said board of water commissioners, shall be countersigned by, remain until sold in the custody of, and be sold or negotiated by the treasurer of the city of Rochester, and all moneys resulting from the sale thereof shall remain in the custody of said treasurer of the city of Rochester, and all expenditures made, or obligations assumed, for the payment of money by said board of water commissioners shall be paid by said treasurer upon vouchers audited, approved and signed by said board of water commissioners, or a majority thereof, and countersigned by the mayor, and all vouchers relating to payments of salaries to employees, or for work under contract, shall also be certified to be correct by the engineer of said board of water commissioners. The said city treasurer shall keep separate accounts of all bonds issued for the purposes described, and of all the moneys received from the sale thereof, and also of all moneys paid upon the vouchers of said board of water commissioners, the said books of account to be open to the inspection of any taxpayer of said city at all reasonable times, and said board of water commissioners are hereby authorized to pay to the said city treasurer the sum of five hundred dollars per annum in full compensation for the services required by this act. All interest which may accrue on said moneys so deposited shall be placed to the credit of said water fund. (*L.* 1873, *Ch.* 754, § 4).

Bonds of commissioner and treasurer—Before any water bonds of the city of Rochester are issued under the direction and authority of the said board of water commissioners, each commissioner shall execute to the city of Rochester a bond for faithful performance of the duties of his office, signed by at least two responsible sureties in the penal sum of twenty-five thousand dollars; and the city treasurer shall also execute to the said city a bond in the penal sum of fifty thousand dollars for the faithful performance of his duty as custodian of the water fund of said city, signed by at least two responsible sureties, who shall each justify in the sum of fifty thousand dollars. The said bonds, both of the commissioners and city treasurer, shall be placed on file in the office of the county clerk of Monroe county, the sufficiency of the security in the several bonds to be determined upon and approved by the mayor of said city. (*L.* 1873, *Ch.* 754, § 5).

Note—The board of water commissioners were authorized to purchase the rights and property of the Rochester water works company. (L. 1873, Ch. 754, § 69.

Records and reports—The said board shall keep a full record of its proceedings in a book to be provided by them for that purpose, which shall at all reasonable times be open for the inspection by the taxpayers. And the said board of water commissioners shall, on the first day of July and January in each year, make a report in writing to the common council of all proceedings had by them and liabilities incurred. And when the office of said board of commissioners shall have ceased, the said books of its record and proceedings shall be delivered to the city clerk and kept in his office. (L. 1873, Ch. 754, § 70.

An Act to empower the executive board of the city of Rochester to acquire land and other property for the water works of said city. (L. 1881, Ch. 29).

Section 1. **Executive board may acquire title to lands for water works**—The executive board of the city of Rochester, by and with the consent of the common council, is hereby authorized to acquire by purchase or in pursuance of the provisions of this act, the title to the lands, waters, lakes, springs, ponds, or streams, or any easement therein, which may be necessary for the purposes of the water works of said city. In case the said executive board is unable to obtain by purchase the said lands, waters, lakes, springs, ponds or streams, or easements therein, they shall be, and are hereby authorized to proceed to acquire such title or rights in the manner hereinafter specified.

Note—The board of water commissioners had the same power as is given to the executive board in above section. (L. 1873, Ch. 754, §§ 52, 53.

§ 2. **Title, how acquired**—The said board may present a petition in the name of the city of Rochester, praying for the appointment of commissioners of appraisal, to the supreme court at any general or special term thereof held in the seventh judicial district. Such petition shall be signed and verified either by the mayor of said city or any member of said executive board. It shall contain a descrip

tion of the property or rights which are sought to be acquired, and must state, in effect, that the property so sought to be acquired is requisite for the purpose of constructing, improving or operating said water works; that the said city or said executive board has not been able to acquire title thereto, and the reason of such inability. It must also state the names and places of residence of the parties who own or have, or claim to own or have, estates or interest in the property so sought to be acquired, so far as the same can, by reasonable diligence, be ascertained. If any of such persons are infants, their ages, as near as may be, must be stated. If any are idiots, or persons of unsound mind, or unknown, that fact must be stated, together with such other allegations and statements of liens, or incumbrances, as the said executive board may see fit to make.

§ 3. **Service of petition and notice.** A copy of such petition, with a notice of the time when and place where the same will be presented to the supreme court, must be served on all persons whose interests are to be affected by such proceedings, at least ten days prior to the presentation of such petition to the court. If the person upon whom such service is made resides in this state and is not an infant, idiot or person of unsound mind, service of a copy of such petition and notice must be made upon him personally or by leaving the same at his usual place of residence with some person of suitable age. If the person on whom such service is to be made resides out of this state and in any of the states of the United States, or in any of the British colonies in North America, such service must be made by delivering to such person personally or leaving at his last place of residence, if known, a copy of such petition and notice at least thirty days before presenting the same to the court; or such service may be made by publishing a notice stating briefly the object of the application, and giving a description of the land or other property to be taken in the state paper and in a newspaper printed in the county in which the property to be taken is situated, once a week for six weeks next previous to the presentation, and by depositing a copy of the petition and notice in the post-office at Rochester, properly folded and directed to such person at his post-office address, if the same can be ascertained, and if not, at the post-office nearest his last place of residence, at least thirty days before presenting such petition to the court, and paying the postage thereon. If such person is an

infant and resides in this state, such service shall be made as aforesaid upon his general guardian, if he has one, and upon such infant personally, if over the age of fourteen years; if under that age, then upon the person who has the care of, or with whom such infant resides. If the person upon whom such service is to be made is an idiot or of unsound mind, and resides in this state, such service may be made upon the committee of his person or estate. If he has no such committee, then upon the person who has the care and charge of such idiot or person of unsound mind. If the person upon whom such service is to be made is unknown, or his residence is unknown, and cannot by reasonable diligence be ascertained, then such service may be made, under the direction of the court, by publishing a notice stating the time and place where the petition will be presented and the object thereof, with a description of the land or other property to be affected by the proceedings, in the state paper, and in a paper printed in the county where the land or other property is situated, once in each week for six weeks previous to the presentation thereof to the court. In all cases not herein otherwise provided for service of the petition, notices and other papers in the proceedings authorized by this act shall be made as the supreme court in the seventh judicial district, or a judge thereof, shall direct.

§ 4. **Special guardian; security** In case any party to be affected by the proceedings hereby authorized is an infant, idiot or of unsound mind, and has no general guardian or committee, the court to which such petition shall be presented shall, before taking any other proceedings thereon, appoint a special guardian to attend to the interests of such person in such proceeding. If a general guardian or committee has been appointed for such person in this state, it shall be the duty of such general guardian or committee to attend to the interest of such infant, idiot or person of unsound mind. The court may require such security to be given by such general or special guardian or committee as it may deem necessary to protect the rights of such infant, idiot or person of unsound mind. All notices required to be served in the progress of the proceedings may be served on such general or special guardian or committee. Any person may appear in such proceedings by an attorney, upon whom all papers shall be served at the place designated by him in such notice of appearance. The court shall appoint some competent attorney to

appear for and protect the rights of any party in interest who is unknown, or whose residence is unknown, and who has not appeared in the proceedings by an attorney or agent.

§ 5. **Proceedings upon petition; oaths and duties of commissioners.**—On presenting such petition to the supreme court as aforesaid with proof of service of a copy thereof, and notices aforesaid, any of the persons whose estates or interests are to be affected by the proceedings may show cause against granting the prayer of said petition and may to that end disprove any of the facts alleged therein. The court shall hear the proofs and allegations of the parties, and if no sufficient cause is shown against granting the prayer of the petition, it shall make an order for the appointment of three disinterested and competent freeholders, residents of the state of New York, as commissioners to ascertain and appraise the compensation to be made to the owners or persons interested in the property so to be acquired, and shall fix the time and place for the first meeting of said commissioners. The commissioners shall take and subscribe the oath prescribed by the twelfth article of the constitution. Any of them may issue subpœnas, and administer oaths to witnesses. A majority of them may adjourn the proceedings from time to time in their discretion. They shall view the premises described in the petition and hear the proofs and allegations of the parties, and reduce the testimony taken by them, if any, to writing, and after the testimony is taken in each case they, or a majority of them, all being present or having notice of the meeting to the end that they may be present, shall, without unnecessary delay, ascertain and determine the compensation which ought justly to be made to the owners or persons interested in the property so sought to be acquired. They, or a majority of them, shall also determine what sum ought to be paid to the general or special guardian or committee of any infant, idiot, or person of unsound mind, or attorney appointed to attend to the interests of any unknown owner or party in interest not personally served with notice of the proceeding and who has not appeared, for his costs and expenses. They shall make a report of their proceedings to the supreme court with the minutes of the testimony taken by them. The compensation to which they shall each be entitled for every day they are actually engaged in the performance of their duties, shall be fixed by said supreme court, and

such compensation, together with their expenses, shall be paid by the city of Rochester. When the owners or persons interested in the property sought to be acquired shall have awarded to them an amount not exceeding the compensation offered by said city of Rochester for such property so sought to be acquired, or their interest therein, said city may recover, and the said supreme court may award against such persons the amount so paid to said commissioners necessarily expended for witnesses, or such part thereof as said supreme court shall deem proper. (*As amended* 1884, *Ch.* 67).

§ 6. **Proceedings not affected by change of ownership** When any proceedings of appraisal under this act shall have been commenced, no change of ownership shall in any manner affect such proceedings.

§ 7. **Confirmation of report** On such report being made by said commissioners, the said city of Rochester shall give notice to the parties or their attorneys, according to the rules and practice of the supreme court, that application will be made to the said court at a general or special term thereof, for the confirmation of such report, and the court shall thereupon confirm such report and shall make an order containing a recital of the substance of the proceedings and a description of the property appraised for which compensation is to be made and shall direct to whom the money is to be paid, or in what bank and in what manner it shall be deposited by said city.

§ 8. **Certified copy of order to be recorded; appeal** A certified copy of the order so made shall be recorded in the clerk's office of the county in which the property described is situated, and thereupon and on the payment or deposit by the said city of the sums to be paid as compensation for the property so taken and for costs and expenses as aforesaid, as directed by said order, the said city shall be entitled to enter upon, take possession of and use the said property for the purpose of the water works, aforesaid, and all persons, who have been made parties to the said proceedings shall be divested of all right, estate and interest in the same. All property acquired pursuant to the provisions of this act shall be deemed to be acquired for public use. Within twenty days after the confirmation of the report of said commissioners, either party may

appeal by notice in writing to the others to the supreme court, from the appraisal and report of said commissioners. Such appeal shall be heard by the supreme court at a general or special term thereof on the usual notice required by the rules and practice of said court. On the hearing of such appeal, the court may direct a new appraisal before the same or new commissioners in its discretion. The second report shall be final and conclusive on all parties interested. If the amount of compensation to be made by said city is increased by the second report, the difference shall be paid by said city to the parties entitled thereto, or deposited in bank as the court shall direct. If the amount is diminished, the difference shall be refunded to said city by the party to whom the same may have been paid, and judgment therefor may be rendered by the court on the filing of the second report against the party liable to pay the same. No appeal shall affect the possession or use by said city of the property so appraised, and when the same is made by others than said city, it shall not be heard except on stipulation of the party appealing not to disturb such possession.

§ 9. **Court to determine conflicting claims**—If there are adverse and conflicting claimants to the money, or any part of it, to be paid as compensation for the property so taken, the court may direct the money to be paid into the court and may determine who is entitled to the same and to whom the same shall be paid in a summary manner, and may order a reference to ascertain the facts on which such determination and order shall be made.

Who entitled to award In re application of the City of Rochester to acquire certain water rights 136 N. Y. 83.

§ 10. **General power of court**—In cases of appraisal under this act the court shall have power to make all necessary orders and directions to carry into effect the object and intent of this act, and to compel the delivery to the said city of Rochester of the possession and control of all property or rights acquired thereby. The practice in such cases shall be conformed as nearly as may be to the ordinary practice of said court.

§ 11. **Amendments to proceedings**—When the mode or manner of conducting any of the proceedings to the appraisal of the property sought to be taken, and the proceedings consequent thereon

are not expressly provided for in this act, the said court before whom such proceedings are pending shall have power to make all necessary orders to that end. The said court shall also have power at any time to amend any defect or informality in any of the proceedings authorized by this act as may be necessary, or to cause new parties to be added to, and further notice to be given to any party in interest as it may deem proper, and shall also have power to appoint commissioners in place of any who shall die, refuse or neglect to serve, or be incapable of serving.

§ 12. **Repeal**—All acts and parts of acts inconsistent with this act are hereby repealed.

§ 13. **When in effect**—This act shall take effect immediately.

AN ACT TO AUTHORIZE THE ISSUE OF BONDS OF THE CITY OF ROCHESTER TO PAY FOR AN ADDITIONAL WATER SUPPLY. *C. L.* 1892, *C. 358.*

Section 1. **Issuing of bonds; proceeds**—The city of Rochester is hereby authorized to borrow money for the purpose, to the amount, and in the manner hereinafter stated, and the common council of the city of Rochester may, from time to time hereafter, for the purpose of furnishing an additional water supply for the city of Rochester and its inhabitants, by a three-fourths vote of the members of said common council, authorize the city treasurer, to issue the bonds of said city to an amount not exceeding, in the aggregate, the sum of one million seven hundred and fifty thousand dollars running for a period not exceeding fifty years, and bearing a rate of interest not exceeding four per centum per annum, payable at such place as the common council shall designate. Said bonds, when issued, shall be signed by the treasurer, sealed with the corporate seal of the city, countersigned by the mayor and president of the common council, and may be either coupon or registered bonds and shall be redeemable at any time after twenty years from the issue thereof. A complete record shall be made and kept by the said treasurer of said bonds, including the dates, amounts and the dates of maturity thereof, and to whom issued, if registered, respectively. The proceeds of said bonds shall be applied to the payment of the costs of procuring said additional water supply.

§ 2. **Sale of bonds**—Whenever the issue of any bonds, by virtue of this act, shall be authorized by said common council, said treasurer shall invite sealed proposals therefor by public advertisement for not less than ten days, and may award the same to the highest bidder therefor; provided, that no proposals shall be accepted for less than the par value of said bonds; and said proposals shall be publicly opened only by the treasurer or such other person as said common council may designate in the presence of the finance committee of said common council or such of them as shall attend at the time and place specified in said advertisement, and said treasurer, with the approval of said finance committee or such members thereof as may be present, shall determine what, if any, part of said proposals shall be accepted, but nothing herein contained shall be construed to prevent the rejection of any or all of said proposals, and said common council is further authorized, for the purpose of paying for the cost and expenses of carrying on the construction of any work now being done, pending the sale of any of said bonds, to borrow by a vote of three-fourths of all the members elected, subject to the approval of the mayor, upon the credit of the city, by its promissory note or notes, payable in not more than a year after their date, so much money as may be deemed necessary, and the amount, so borrowed, shall be placed to the credit of the additional water supply fund to be refunded, with interest, from the proceeds of the sale of said bonds. (*As amended L.* 1894, *Ch.* 394).

§ 3. **Deposit in banks** The several banks, including the savings banks, within the city of Rochester, and the Rochester trust and safe deposit company are hereby authorized to receive and keep on deposit any moneys raised by the sale or for the payment of said bonds, and to pay on such deposits the same rate of interest, as that of the bonds, of which such deposits are the proceeds respectively, and each and every bank or company receiving such deposits as aforesaid, shall execute and give to said city a bond with sufficient sureties conditioned to save said city harmless in any event of and from any loss by reason of such deposits, said bonds to be approved by the mayor and chairman of the finance committee.

§ 4. **Redemption**—In any year in which by the provisions of this act, any portion of the principal of the bonds herein authorized shall be subject to redemption, it shall be the duty of the city treas-

urer to give notice, in at least the official newspaper of the city of Rochester, and in one or more newspapers published in the city of New York, during the first ten days of July, stating the amount of such bonds to be redeemed at par, and accrued interest, and inviting tenders thereof from the holders of such bonds, and from the tenders so received, if any, to select bonds to an amount not exceeding the amount required for redemption, and to give the holders thereof notice that the same will be paid at such place as such bonds and the interest thereon shall by their terms be made payable, on or before the first day of September then next. In case the amount so tendered shall be less than the amount so required for redemption, it shall be the duty of the said treasurer between the fifteenth and twentieth days of any such July, to draw, by lot, from the bonds outstanding, the numbers required to supply any such deficiency, or, in case no tender shall have been received, the whole number so required for redemption, and for this purpose, each one thousand dollars of bonds so issued, whether registered or coupon, shall be numbered consecutively in the order of issue, and as to the bonds so drawn, the said treasurer shall at once give public notice in one or more of the newspapers published in the city of Rochester, of the fact that such bonds, stating the numbers, have been drawn for redemption and that the same will be paid, with accrued interest, at such place as he shall designate, on or before the first day of August then next, and as to all such bonds so tendered or drawn, and in respect to which the money required for their redemption shall be provided and kept ready for payment, from and after the several times so limited for redemption, and payment and interest shall cease.

§ 5. **When in effect**—This act shall take effect immediately.

Note—Laws 1892, Ch. 358, providing for issuing water bonds payable in not more than fifty years, held not in conflict with § 11, Art. 8, of the State Constitution of 1846 (same provision, § 10, Art. 8, Constitution of 1894). City of Rochester vs. Quintard, 136 N. Y. 221.

An Act to authorize the city of Rochester to issue bonds to pay for a water distributing system. *L.* 1894, *Ch.* 380.

Section 1. **Bonds for water distributing system**—The city of Rochester is hereby authorized to borrow money for the purposes, to the amount, and in the manner hereinafter stated, and the common

council of the city of Rochester may from time to time hereafter, for the purposes of providing said city with additional water distributing mains in connection with the water works system of said city by a three-fourths vote of the members of said common council, authorize the city treasurer to issue the bonds of said city to an amount not to exceed in the aggregate the sum of two hundred and fifty thousand dollars running for a period not exceeding twenty years, and bearing a rate of interest not exceeding four per cent. per annum, payable at such place as the common council shall designate. Said bonds when issued shall be signed by the treasurer, sealed with the corporate seal of the city, countersigned by the mayor and president of the common council and be either coupon or registered bonds. A complete record shall be made and kept by the city treasurer of the said bonds, including the dates, amounts and dates of maturity thereof, and to whom issued if registered respectively. The proceeds of said bonds shall be applied to the payment of the cost of constructing said distributing mains.

§ 2. **Sale of bonds**—Whenever the issue of any bonds by virtue of this act shall be authorized by said common council said treasurer shall invite sealed proposals therefor by advertisement in the official paper for not less than ten days, and may award the same to the highest bidder therefor, provided that no proposal shall be accepted for less than the par value of said bonds, and said proposals shall be publicly opened only by the treasurer, or such other person as said common council may designate in the presence of the finance committee of said common council or such of them as shall attend at the time and place specified in said advertisement and said treasurer with the approval of said finance committee or such members thereof as may be present, shall determine what, if any, part of said proposals, shall be accepted, but nothing herein contained shall be construed to prevent the rejection of any or all of said proposals. And said common council is further authorized for the purpose of paying for the costs and expenses of carrying on the construction of any work pursuant to this statute, pending the sale of any of said bonds to borrow by vote of three-fourths of all of the members elected subject to the approval of the mayor upon the credit of the city by its promissory note or notes payable in not more than a year after their date so much money as may be deemed necessary and the amount so bor-

rowed shall be placed to the credit of the funds for the purposes of this statute to be refunded with interest from the proceeds of the sale of said bonds.

§ 3. **Deposits** The several banks including the saving banks within said city, and the Rochester trust and safe deposit company and Security trust company of Rochester, are hereby authorized to receive and keep on deposit any moneys raised by the sale or for the payment of said bonds by the notes of said city pursuant to this act, and to pay on such deposits such rate of interest as agreed upon by said finance committee, and each and every bank and company receiving such deposits as aforesaid shall execute and give to said city a bond with sufficient sureties conditioned to save said city harmless in any event of and from any loss by reason of such deposits, said bond to be approved by the mayor and chairman of the finance committee.

§ 4. **Payment of interest on bonds** In order to provide for the payment of interest of the bonds hereby authorized to be issued by said city, there shall be added to the general city taxes of the city at large in the year when the first issue of bonds hereby authorized shall be made and each year thereafter, such sum of money in each of said years as shall be required to pay the interest upon the bonds which shall have been issued pursuant to the provisions of this act. To provide for the payment of the principal of said bonds it shall be the duty of the treasurer of said city to estimate and ascertain the amounts required to be added to the general city taxes of said city by virtue of this act and to transmit a statement each year to said common council in time to have such amount included in the general city tax of said city for that year, and it shall be the duty of said common council to cause such amount to be included in such general city tax and to provide annually by tax for the payment of the principal and interest of the bonds issued pursuant to the provisions of this act.

§ 5. **When in effect** This act shall take effect immediately.

AN ACT TO PROVIDE FOR THE SANITARY PROTECTION OF THE SOURCES OF WATER SUPPLY OF THE CITY OF ROCHESTER BY THE ACQUISITION BY SAID CITY OF REAL PROPERTY AND INTERESTS THEREIN NECESSARY FOR THAT PURPOSE, AND BY THE ABATEMENT AND REMOVAL OF SOURCES OF POLLUTION. (L. 1895, Ch. 1, as amd.)

Section 1. **City empowered to acquire lands at Hemlock lake** It shall be lawful for the city of Rochester to acquire in the

manner hereinafter stated, title to any real property, including lands under water, and any interest or easement therein, in the counties of Livingston and Ontario, included within a line drawn around the shores of Hemlock lake situated in said counties, and two hundred feet distant from high water mark, that may be necessary for the sanitary protection of the sources of the water supply of said city, and the abatement and removal of sources of pollution thereof. (*As amended L.* 1901, *Ch.* 249).

§ 2. **Hemlock lake commission** Within twenty days after this act takes effect the executive board of said city shall apply to a special term of the supreme court for the appointment of three disinterested persons, residents of said city, to be known as the "Hemlock lake commission" to contract for the purchase of such real property, interest or easement therein. Such commissioners shall receive five dollars for each day actually employed in such service, and shall call upon the city engineer and corporation counsel and other officers of said city for such assistance as may be required, and shall have power to employ such other assistants as may be necessary. A vacancy in the office of a commissioner, on the application of the commissioner or commissioners in office, or of any person interested, may be filled by the court which originally appointed the commissioners. In case said commissioners are unable to contract for the purchase of such real property, interest or easement therein, they shall apply to the supreme court on behalf of said city, under the condemnation law, for the acquirement of such real property, interest or easement therein, and all proceedings for the condemnation of such real property, interest or easement therein shall be as provided in the condemnation law. If it shall be necessary for the purposes of this act, such commissioners may take any highway or portion of a highway within the limits described in section one, but they shall reconstruct any such highway in a manner satisfactory to the highway commissioners of the town in which it is located, and so as not to materially interfere with the public travel, and acquire the necessary land therefor, by agreement with the owners thereof, or if unable to so agree, by condemnation. (*As amended L.* 1899, *Ch.* 640).

§ 3. **Abatement of nuisances**—The board of health of said city in addition to any other remedies provided by law for the sanitary protection of water supplies, or the suppression of nuisances, is hereby

authorized by its duly constituted agents, to enter upon any real property which said city is authorized to acquire under section one of this act and order the abatement or removal of any actual source of pollution or defilement of the water supply of said city, and if such order is not complied with after twenty-four hours written notice to summarily abate or remove the cause of any such pollution or defilement, and the expense of such abatement or removal shall be a debt recoverable by said city of all persons maintaining it or assisting in its maintenance. (*As amended L.* 1899, *Ch.* 640).

§ 4. **Watershed bonds**—For the purpose of securing the payment of the purchase price of said real property or paying any awards made by commissioners of appraisal, or and judgment recovered, damage sustained, costs or expenses incurred pursuant to this act, the common council of said city is authorized, and it is hereby directed to issue the bonds of said city, to be known as the "watershed bonds of the city of Rochester," to run for a period not exceeding fifty years, at a rate of interest not exceeding four per centum per annum, and in an amount not exceeding the sum of three hundred and seventy thousand dollars. Said bonds shall be sold, signed, sealed and countersigned as provided for the additional water supply bonds of said city. None of said bonds, however, shall be sold at less than par. The proceeds of said bonds shall be paid into the city treasury, and shall be paid out from time to time upon the order of the commissioners appointed under section one to the persons entitled thereto, pursuant to this act. Said common council shall raise annually by tax upon the real and personal estate subject to taxation in said city, as a sinking fund for the redemption of said bonds, a sum which will pay the interest when due on said bonds and equal the principal at their maturity. Pending the sale of any of said bonds, said common council may borrow money for the purposes of this act upon the promissory note or notes of said city. (*As amended L.* 1901, *Ch.* 249).

§ 5. **Deposits in bank**—The several banks, including the savings banks within the said city of Rochester, the Rochester Trust and Safe Deposit Company and the Security Trust Company of said city, are hereby authorized to receive and keep on deposit at interest any moneys raised by the sale or for the payment of bonds pursuant to section four, and each and every bank or company re-

ceiving such deposits as aforesaid shall execute and give to said city a bond with sufficient surety conditioned to save said city harmless from any loss by reason of such deposits, said bonds to be approved by the mayor. (*Repealed L.* 1899, *Ch.* 640).

§ 6. **Powers of Hemlock lake commission transferred**— On the thirtieth day of June, nineteen hundred and two, the powers and duties of the commissioners under this act shall cease and shall vest in and be discharged by the commissioner of public works of the city of Rochester. On such date said commissioners shall file with the commissioner of public works a complete record of their proceedings together with all their books, contracts and papers and shall turn over to the treasurer of said city all moneys belonging to said city which moneys the treasurer shall deposit to the credit of the Hemlock lake sanitary protection fund. (*Added by L.* 1902, *Ch.* 187, § 10.

§ 7. **Acts of commissioners validated** All conveyances, contracts and options made to or with the commissioners or any of them are hereby validated and any commissioner is hereby authorized and directed to convey and assign to the city of Rochester any real property, rights, easements, contracts or options acquired by him and said city is authorized to hold and enforce the same. (*Added by L.* 1902, *Ch.* 187, § 11.

AN ACT TO AUTHORIZE THE ISSUE OF BONDS OF THE CITY OF ROCHESTER TO PROVIDE MONEY WITH WHICH TO PAY BONDS OF SAID CITY WHICH WILL MATURE ON JANUARY FIRST, NINETEEN HUNDRED AND THREE, AND WHICH ARE KNOWN AS THE WATER WORKS BONDS. (*L.* 1902, *Ch.* 550).

Section 1. **Bonds to pay water works loan bonds** The city of Rochester is hereby authorized to borrow money to the amount of three millions of dollars, in the manner hereinafter stated; and the common council of the city of Rochester, for the purpose of providing money with which to pay the bonds of said city heretofore issued pursuant to law, may, by a majority vote of the members of said common council, on or before the twentieth day of December,

nineteen hundred and two, authorize the comptroller to issue the bonds of said city to the amount of three millions of dollars, running for a period not to exceed thirty years, bearing a rate of interest not to exceed three and one-half per centum per annum, payable at such place as the common council shall designate. Said bonds, when issued, shall be signed by the mayor and treasurer, sealed with the corporate seal of the city, and countersigned by the comptroller, and may be either coupon or registered bonds, and shall be redeemable either at the option of the city, or if the common council shall so determine, then the said bonds shall become payable in installments at the end of five, ten, fifteen, twenty, twenty-five and thirty years, respectively. The proceeds of said bonds shall be applied to the payment of the bonds heretofore issued by said city, known as the water works loan bonds and falling due January first, nineteen hundred and three.

§ 2. **Sale of bonds**—The bonds of the city of Rochester which shall be issued by virtue of this act, shall, as authorized by the common council, be negotiated by the comptroller and sold after competition upon sealed proposals, or at public sale to the highest bidder, but said bonds shall not be sold at less than par.

§ 3. **When in effect**—This act shall take effect immediately.

Acts extending water mains beyond the limits of the City of Rochester:

To the Co-Operative Foundry—L. 1888, Ch. 33.
To the Towns of Gates and Greece—L. 1897, Ch. 38;
To the towns of Brighton and Irondequoit—L. 1897, Ch. 344.
To the Eastman Kodak Company—L. 1897, Ch. 340.
To the property of Frank Schuler in Town of Gates—L. 1900, Ch. 328.

Miscellaneous acts relating to river and canal bridges and repairs:

L. 1877, Ch. 365—Amended L. 1878, Ch. 60—Allen street bridge.
L. 1877, Ch. 360—Closing Erie canal feeder.
L. 1878, Ch. 113—Amended L. 1879, Ch. 230—Brown and Smith street bridges.
L. 1886, Ch. 357—Genesee river feeder.

L. 1887, Ch. 81—Removing obstructions in canal.
L. 1888, Ch. 350—Pinnacle avenue bridge, appropriation for construction.
L. 1886, Ch. 306—Amended L. 1887, Ch. 459—Deepening Lyell and Saxton street sewer.
L. 1887, Ch. 533—Monroe avenue bridge, rebuilding of.
L. 1887, Ch. 222—Genesee Valley canal.
L. 1887, Ch. 643—Rowe street sewer, use of, for canal leakage.
L. 1888, Ch. 351—West avenue bridge, removal of.
L. 1888, Ch. 352—Culvert under canal between 7th and 10th streets.
L. 1888, Ch. 355—Lyell and Saxton street sewer, re-appropriation for deepening.
L. 1888, Ch. 363—Bridges over Genesee river.
L. 1889, Ch. 100—Amended L. 1890, Ch. 177—Caledonia avenue bridge.
L. 1889, Ch. 481—Culver street bridge.
L. 1889, Ch. 343—Lyell and Saxton street sewer, re-appropriation for deepening.
L. 1891, Ch. 138—Rowe street bridge.
L. 1892, Ch. 301—Bridges over Genesee river.
L. 1893, Ch. 14—Ford street bridge.
L. 1893, Ch. 336—Emerson street bridge.
L. 1893, Ch. 726—Repairs to canal wall, appropriation for.
L. 1894, Ch. 559—Griffith street bridge.
L. 1894, Ch. 560—Emerson street bridge, additional appropriation for.
L. 1894, Ch. 652—West avenue bridge, plans for.
L. 1894, Ch. 653—Retaining wall, St. Paul street.
L. 1895, Ch. 219—Emerson street bridge, re-appropriation for.
L. 1895, Ch. 514—Exchange street bridge.
L. 1896, Ch. 950—Emerson street bridge, providing for deficiency.
L. 1897, Ch. 32—Fitzhugh street bridge.
L. 1897, Ch. 207—Monroe avenue bridge, re-construction of.
L. 1897, Ch. 339—S. Clinton street bridge, construction of.
L. 1897, Ch. 572—Exchange street bridge, re-appropriation for.
L. 1897, Ch. 791—Exchange street bridge, appropriation for completion of.
L. 1898, Ch. 606—Fitzhugh street bridge, re-appropriarion for completion of.
L. 1898, Ch. 607—Monroe avenue bridge, re-appropriation for completion of.
L. 1899, Ch. 477—Fitzhugh street bridge, re-appropriating unexpended balance for.
L. 1899, Ch. 549—West avenue bridge.
L. 1899, Ch. 569—Exchange street bridge, appropriation to pay deficiency for.
L. 1900, Ch. 419—South Fitzhugh street bridge, appropriation for.
L. 1901, Ch. 645—Lyell avenue bridge, appropriation for.
L. 1901, Ch. 687—West avenue bridge, appropriation for.
L. 1901, Ch. 732—Plymouth avenue bridge.
L. 1902, Ch. 594—Plymouth avenue bridge, removal of.
L. 1903, Ch. 573—Plymouth avenue bridge, appropriation for.

LAWS AFFECTING CITIES

NOTE—THE FOLLOWING TABLE PRESENTS VARIOUS PROVISIONS OF LAW OF INTEREST IN CITIES OF THE SECOND CLASS. SOME OF THE MATERIAL HEREIN HAS BEEN NOTED IN THIS BOOK ELSEWHERE, BUT FOR BETTER CONVENIENCE THESE LAWS ARE BROUGHT TOGETHER ALPHABETICALLY AS FOLLOWS:

Actions—See memorandum on, including City or city officers, this book, p. 51.

Aldermen—See notes as to powers of, this book, pp. 47-48.

Armory—Special act relating to, in the city of Rochester, public— in full, this book, p. 548.

Auctioneers and Peddlers—Domestic Commerce Law, §§ 32-63.

Automobiles—Act relating to—L. 1904, Ch. 248, exceeding speed limit a misdemeanor, Penal Code, § 600, as amended L. 1910, Ch. 366.

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